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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

NEW YORK, NY

WHEN: May 21, at 9:00 am
WHERE: 26 Federal Plaza
Room 305 B and C
New York, NY
RESERVATIONS: Federal Information Center
1–800–347–1997

WASHINGTON, DC

WHEN: May 23, at 9:00 am
WHERE: Office of the Federal Register
First Floor Conference Room
1100 L Street, NW, Washington, DC
RESERVATIONS: 202–523–5240 (voice); 202–523–5229 (TDD)

NOTE: There will be a sign language interpreter for hearing impaired persons at the May 23, Washington, DC, briefing.

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Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1421

Grain and Similarly Handled Commodities

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: On March 11, 1991, the Commodity Credit Corporation (CCC) issued proposed rules with respect to the price support programs for wheat, feed grains, rice, oilseeds, and farm-stored peanuts which are conducted by the CCC in accordance with the Agricultural Act of 1949, as amended (the 1949 Act). The rule is necessary in order to amend the regulations at 7 CFR part 1421 to implement the changes made by the Food Agriculture, Conservation and Trade Act of 1990 (the 1990 Act) and the Omnibus Budget Reconciliation Act of 1990 (1990 Budget Act). Generally, this rule amends the manner in which producers may participate in CCC price support programs for wheat, feed grains, rice, oilseeds (including soybeans) and farm-stored peanuts and the terms and conditions of CCC price support programs for wheat, feed grains, rice, oilseeds, and farm-stored peanuts, and specifies the CCC price support loan eligibility quality requirements for the 1991 and subsequent year's crops.

EFFECTIVE DATE: May 2, 1991.

FOR FURTHER INFORMATION CONTACT: Alex King, Supervisory Program Specialist, Cotton, Grain, and Rice Price Support Division (CGRD), Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA) P.O. Box 2415, Washington, DC 20013, telephone (202) 447-8223.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under United States Department of Agriculture (USDA) procedures established in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512-1 and it has been determined to be "non-major" because these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the federal assistance program, as found in the catalogue or Federal Domestic Assistance, to which this final rule applies is Commodity Loans and Purchases, 10.051.

It has been determined that the Regulatory Flexibility Act is not applicable because the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rule making with respect to the subject matter of these determinations.

It has been determined by environmental evaluations for the wheat, feed grain, rice, oilseed, and farm-stored peanuts CCC price support programs that these programs will have no significant impact on the quality of the human environment.

These programs are not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, and 48 FR 29115 (June 24, 1983).

Public reporting burden for the information collections contained in this final rule with respect to price support programs for wheat, feed grain, rice, oilseeds, and farm-stored peanuts is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The information collection has previously been cleared by OMB, assigned number 0560-0087.

A proposed rule was published in the **Federal Register** on March 11, 1991, at 56 FR 10192 which would amend regulations found at 7 CFR part 1421 with respect to the price support program for wheat, feed grains, rice, oilseeds, and farm-stored peanuts which is conducted by CCC. The proposed rule provided a 15-day public comment period which ended March 26, 1991.

Discussion of Comments

Eleven respondents commented on the proposal to provide that a producer shall be considered to have divested beneficial interest in a commodity if the purchaser or intended purchaser pays the producer any advance payment amount which CCC determines has provided the purchaser or intended purchaser a beneficial interest in the commodity except with respect to approved cooperative marketing associations. Generally, respondents believed that this would eliminate an effective marketing tool producers have in getting the best price for their commodity and the elimination of this tool would result in lower producer prices. The proposed rule did not propose to change the manner in which CCC operates these programs but merely set forth more clearly the policy of CCC which has been in place since enactment of the Food Security Act of 1985. However, as a result of the comments received, CCC has re-examined its current policy to determine if a more effective program can be achieved. CCC agrees that it is in the best interest of producers and users of commodities to have efficient marketings which are not disrupted by CCC programs. Accordingly, after reviewing the comments received, it has been determined that § 1421.5(c) of the proposed rule should be changed to permit producers to execute an option to purchase contract and to receive an advance payment in return for such option if the option to purchase contains a specific provision allowing the producer to retain title, risk of loss, and beneficial interest until the earlier of the expiration of the option or the date CCC claims title to the commodity. This will adequately protect CCC's interest in commodities pledged as collateral for price support loans while allowing producers and buyers of commodities to arrange for the potential sale of the

commodity prior to the expiration of the loan.

There were nine comments concerning the proposed formulas for calculating the adjusted world price for the oilseed crops. Respondents generally stated that CCC was not specific in the locations to be used for determining the adjusted world price. Because of limited pricing data available for determining the world market price and the ever-changing dynamics of world prices, CCC must have the flexibility to determine the most accurate price possible. Accordingly, it is not possible to specify the exact locations which will be used during the entire 5 year period of the authorized programs. Accordingly, these suggestions are not adopted.

There were eight respondents about CCC's proposed elimination of additional loan disbursements commonly referred to as "transportation assistance". Respondents declared that CCC was eliminating a vital tool which facilitates orderly marketing. "Transportation assistance" was initially made available when commercial storage capacity was tight and producers were not able to readily forfeit commodities to CCC under price support loan agreements. As a result, CCC increased the loan rate for these producers to reflect increased transportation charges which were incurred at the time of delivery. Since that time, truck and rail rates have been deregulated and storage facilities are available for forfeiting CCC collateral. Accordingly, "transportation assistance" will no longer be made available. However, CCC has determined to provide producers of all commodities subject to 7 CFR part 1421 the loan rate applicable to the county where the commodities is forfeited. Accordingly, since county loan rates vary depending primarily upon transportation costs, this rate will reflect any location ajustment without the need to further adjust the loan rate for transportation.

There were three respondents that disagree with CCC's proposed requirement that producers be responsible for all loss in the quality and quantity of loan collateral since this would eliminate CCC assuming any loss of loan collateral. As the result of a final rule published on March 1, 1988, CCC has assumed the loss of only a minimal number of these losses; however, many producers are unable to obtain insurance for these and other types of losses on CCC loan collateral because of this policy. Accordingly, based upon CCC's review of this issue, it has been determined that producers will be better protected through insurance from private sources if the proposed rule is adopted. Further, this determination will promote quality in the marketing of crops produced in the United States as intended by section 2518 of the 1990 Act. Accordingly, these suggestions are not adopted.

There were two respondents to CCC's proposal to provide that ground ear corn is ineligible to be pledged as collateral for a price support loan. It has been CCC's historical policy that for price support purposes, corn must meet the Federal Grain Inspection Standards definition of corn which states that corn must contain at least 50 percent whole kernels. Further, in the event CCC takes possession of corn pledged as collateral for a price support loan, CCC must be able to store and dispose of the commodity. Since this can not be accomplished with ground ear corn, these suggestions are not adopted.

There were two respondents to CCC's proposal to deduct applicable marketing fees, loan origination fees, and loan service fees. In review of the comments, it has been determined that the marketing assessment as provided in § 1421.12(d) of the proposed rule will result in the producer paying the assessment twice, once when the loan is made and once when the peanuts are sold. Consequently, this final rule deletes the provision for deducting the marketing assessment from farm-storeed peanut loans. However, for all other assessments and the loan origination fee for oilseeds, the 1949 Act requires CCC to deduct such fees from the loan proceeds. For the loan service fee, CCC has historically charged this fee to recover some of the administrative costs associated with loan processing. Accordingly, these fees will continue to be deducted as proposed.

There were two respondents to CCC's proposal to limit the quantity that can be transferred from a farm-stored loan to a warehouse-stored loan. This limit was proposed in order to be consistent with the limit CCC imposes on all farm-stored loans. By not imposing this limit, producers who transfer farm-stored loans to a warehouse-stored could receive an additional disbursement not allowed with respect to a farm-stored loan that is not so transferred. Accordingly, in order to provide equitable treatment to all producers, the proposed provision is adopted without change.

There was one respondent to CCC's proposal to eliminate adjusting the loan rate for farm-stored wheat based on the percent of protein. Because of the inability of CCC to accurately determine protein content on such wheat, CCC proposed to only adjust the loan rate for warehouse-stored wheat. Although CCC has reviewed this issue in an attempt to provide such an adjustment, CCC has not been able to determine a method which will accurately reflect such protein content on farm stored loans and still protect CCC's interests. Accordingly, only warehouse-stored loans will be disbursed based upon protein content.

There was one respondent to CCC's proposal to allow the extension of wheat and feed grain loans for farmer owned reserve loan eligibility. CCC is required to announce the level of any farmer owned reserve program (FOR) for wheat, January 15 and for feed grains, March 15. Because some loans will mature before the intentions to participate in any such announced FOR, such loans may be extended to allow producers with such loans to participate in the FOR.

There was one respondent to CCC's proposal to restrict the authority for county committees to waive administrative penalties for producers who move or dispose of loan collateral without proper authorization. County committees have the authority to waive certain administrative penalties in accordance with § 1421.17(g); however, such authority is limited to situations where it is the producer's first offense. In cases where it is the producer's subsequent offense, in order to ensure uniform treatment of all producers who have impaired CCC's security interest in prior instances and in order to evaluate whether criminal action should be instigated as the result of conversion of CCC's security interest, only the administrator, Agricultural Stabilization and Conservation Service, or a designee will be authorized to waive administrative penalties.

There was one respondent to CCC's proposal to eliminate allowing producers to substitute loan collateral at delivery. The 1949 Act specifically states that the loan collateral must be a commodity produced by an eligible producer on the farm. Allowing quantities other than the loan collateral to be delivered in satisfaction of the loan would result in ineligible commodities being delivered in satisfaction of the loan. Accordingly, this proposed provision is adopted without change.

There was one respondent to CCC's proposal requiring producers to provide acceptable production evidence in the form of warehouse receipts, load summary statements, or sales documents. The respondent requested

that scale tickets be included. While scale tickets will provide evidence of weight, there is no assurance as to the commodity, class, variety, condition, or other such factors CCC determines necessary to make a positive determination of the production. Accordingly, this suggestion is not adopted.

There was one respondent to CCC's proposal to transfer delinquent matured loans to claims, stating that the producer should be allowed at least 30 days from the date the loan matures. Because it is the intent of CCC to allow at least 30 days and, in most cases, at least 45 days, from the date the loan matures before outstanding delinquent matured loans are transferred to a claim status, the proposed provision is adopted without change.

There were three respondents that stated that the comment period was insufficient to adequately publicize the proposed rule. Because producers are making major decisions regarding the planting of 1991 crops at this time, the comment period was limited to 15 days in order that this final rule could be issued in a timely manner.

A proposed rule was also published on March 11, 1991, at 56 FR 10189 which would amend the regulations at 7 CFR part 1421 with respect to the oilseed price support program.

The proposed rule provided that canola, flaxseed, rapeseed, and safflower seed must contain a minimum oil content of 38% and sunflower seed a minimum oil content of 35%. A total of 83 comments were received with respect to the minimum oil content provision. With respect to canola, flaxseed, rapeseed, and safflower, 31 respondents recommended the provision be deleted, 38 respondents recommended the proposed minimum oil content of 38% be reduced, and 4 respondents commented that the minimum oil content percentage was too high. With respect to sunflower seeds, 5 respondents recommended the provision be deleted, 2 respondents commented that the percentage was too high, 1 respondent supported the proposed amendment, 1 respondent recommended the minimum oil content be reduced from 35% to 25%, and 1 respondent suggested that CCC retain the 35% oil content provision for "oil" sunflower seeds and establish a "non" oil subclass for other sunflower seeds.

The respondents recommending the oil content provision for canola, flaxseed, rapeseed, and safflower seed be deleted commented that these commodities are not traded commercially on the basis of oil content. Some respondents suggested that the proposed minimum oil content levels would eliminate the majority of oilseed growers from participating in the price support program if such levels were not reduced. It was suggested that if CCC were to retain the minimum oil provision, then these commodities should have the same minimum oil content level as sunflower seed, 35%. With respect to sunflower seeds, the majority of the respondents suggested the 35% minimum oil content would eliminate sunflower seeds which are used for purposes other than for making oil from the price support program.

With respect to establishing a minimum oil content requirement for price support eligibility, it is CCC's position that oil content is a significant factor in determining the quality of the oilseed, except for flaxseed and mustard seed. Also, the level of national average loan rate established in the 1949 Act contemplates a high quality oilseed for the price support program. Accordingly, it has been determined that the proposed minimum oil content provision for canola, rapeseed, and safflower seed should be adopted in the final rule. However, CCC concurs with the respondents that the minimum oil content level for canola, rapeseed, and safflower seed should be reduced to more closely reflect the oil content used in the trading of these commodities. Accordingly, the minimum oil content levels for these commodities will be established as follows: Canola, 35%, rapeseed, 35%; and safflower seed, 35%.

With respect to sunflower seeds, CCC concurs with the respondents that to require a minimum oil content level for sunflower seeds used for purposes other than for oil will effectively eliminate such sunflower seeds from the price support program. Accordingly, CCC has determined to established quality requirements for sunflower seeds intended to be used primarily for oil and quality requirements for sunflower seeds whose intended use is primarily for a purpose other than oil.

The proposed rule provided that test weights be used as grading factors to determine price support eligibility. Accordingly, it was proposed that canola, flaxseed, mustard seed, rapeseed, safflower seed, and sunflower seed must contain a minimum test weight of 50 pounds, 49 pounds, 54 pounds, 50 pounds, 40 pounds, and 28 pounds, respectively.

The proposed rule also provided that test weights be used to determine the measured quantities of farm-stored loans. Accordingly, it was proposed, for measurement purposes, that a bushel would consist of the following: for canola, 50 pounds free of dockage; for flaxseed, 56 pounds free of dockage; for mustard seed, 54 pounds free of dockage; for rapeseed, 50 pounds free of dockage; for safflower seed, 40 pounds free of dockage; and for sunflower seed, 28 pounds free of dockage.

A total of 58 comments were received with respect to the minimum test weight provisions. 25 respondents commented that the proposed levels were too high, 21 respondents recommended the levels be reduced, and 12 respondents suggested the provision be deleted.

A general consensus of the respondents is that test weights are not used as grading factors in the marketplace and therefore should not be used as eligibility criteria for price support purposes. Also, some respondents suggested the proposed levels would eliminate a large percentage of growers from participating in the price support program. These respondents suggested that if CCC retains this provision, then CCC should reduce the minimum levels.

CCC concurs with the respondents that test weights should not be used as price support eligibility criteria, except for flaxseed and sunflower seed. The exception for flaxseed and sunflower seed is provided because test weights for these two commodities are grading factors under the Official U.S. Standards for Grain. Accordingly, it has been determined to delete minimum test weights as a provision for price support eligibility, except for the aforementioned commodities. In addition, to more accurately recognize the appropriate factor used to determine a bushel of sunflower seed, a bushel of sunflower seed shall be 28 pounds of sunflower seed free of foreign material.

The proposed rule provided that the oilseeds must not contain moisture in excess of 8%. A total of 57 comments were received with respect to the maximum moisture levels. 36 respondents recommended the maximum levels be increased to 10%, 13 respondents commented that the levels were too low, 6 respondents recommended the maximum levels be increased to 9%, and 2 respondents suggested the 8% maximum levels be adopted as proposed.

The general consensus of the respondents is that oilseeds can be safely handled and stored at higher levels than that proposed by CCC. Some respondents suggested that the proposed 8% level may cause inexperienced people to over-dry the oilseed thereby causing the oilseed to be downgraded due to heat damage. It was further suggested the proposed 8% level would increase costs and discourage growers from participating in the program.

CCC concurs with the respondents in that the 8% moisture level may discourage growers from participating in the program. Accordingly, it has been determined to increase the maximum moisture levels as follows: canola, 10%; flaxseed, 9%; mustard seed, 10%; rapeseed, 10%; safflower seed, 10%: and sunflower seed, 10%.

The proposed rule provided that: (1) The glucosinolate content for canola must not exceed 30 micro moles per gram and 2% for erucic acid; (2) rapeseed must not contain less than 45% erucic acid; and (3) safflower seed must not exceed a free fatty acid level of 4% and contain less than 140 or more than 148 WIJS iodine value.

A total of 52 comments were received with respect to the aforementioned requirements. With respect to the glucosinolate requirement, 3 respondents suggested the requirement be deleted. With respect to the erucic acid requirement, 7 respondents suggested the requirement be deleted and 1 resondent recommended that in lieu of requiring a chemical test, permit producers to certify to canola and rapeseed based on the seed planted. With respect to the free fatty acid requirement, 3 respondents suggested the requirement be deleted, 1 respondent recommended the tolerance level be reduced from 4% to 2%, and 1 respondent recommended the tolerance level be reduced from 4% to 1%. With respect to the iodine value requirement, 22 respondents suggested the requirement be deleted, 6 respondents recommended the iodine value range be revised from 140–148 to 80–155, 5 respondents recomended the range be revised to 85–155, 2 respondents recommended the range be revised to 140–155, and 1 respondent recommended the range be revised to 80–160.

The respondents suggesting the quality requirements be deleted argued that to require a determination of these precise levels would require the use of near infrared reflectance instruments and other costly chemical-based testing equipment. The respondent recommending that producers be permitted to certify to canola and rapeseed in lieu of an erucic acid chemical test argued that the certification method will be used by warehousemen for purposes of segregating these two oilseeds. The respondents suggesting that CCC revise its tolerance level on the free fatty acid requirement were concerned the proposed 4% level would allow for a lesser quality of safflower seed into the price support program. The respondents recommending the iodine value range be revised argued that the proposed range did not take into account new varieties of high oleic safflower seed and high linoleic safflower seed, thus, in effect, eliminating such safflower seed from the price support program.

After careful review of the comments received, CCC has determined to retain the aforementioned quality requirements. CCC believes that these quality requirements are necessary to distinguish the types, varieties, and proper use of each oilseed. Inasmuch that the ultimate user of the oilseed must know these factors, it is necessary that CCC establish requirements deemed appropriate for prudent management of its inventories. With respect to the testing equipment needed to determine such quality levels, the Federal Grain Inspection Service will provide quality factor determinations upon request. The costs associated with determining quality levels shall be paid by the producer.

CCC concurs with resondents suggesting that the proposed iodine value range would eliminate new varieties of safflower seed from the price support program. Accordingly, it has been determined to revise the iodine value range from 140–148 to 80–155.

The proposed rule provided that flaxseed and sunflower seed pledged as collateral for price support loans must grade U.S. No. 1 or better. A total of 11 comments were received with respect to the U.S. No. 1 grade requirement. 7 respondents stated that the requirement was too restrictive and 4 respondents recommended the requirement be reduced from U.S. No. 1 or better to U.S. No. 2 or better.

The general consensus of the respondents is that establishing a U.S. No. 1 grade or better requirement for flaxseed and sunflower seed will eliminate a large percentage of producers from participating in the program. In addition, the respondents argued the proposed requirement was not consistent with the wheat and feed grain programs which allow for lower grades of grain to be eligible for price support.

CCC concurs, in part, with the respondents. Establishing a quality requirement of U.S. No. 1 or better may eliminate some flaxseed and sunflwoer seed producers from participating in the price support program. Accordingly, it has been determined to reduce the quality requirement from U.S. No. 1 or better to U.S. No. 2 or better for flaxseed and for sunflower seed intended to be used for oil.

In reviewing this provision with other oilseed quality requirements, it was determined that some of the mustard seed quality requirements were also too restrictive. Accordingly, some quality requirements for mustard seed have been revised for purposes of not eliminating producers from the program.

The reduced quality requirements may be viewed by some as still being too restrictive in comparison to the requirements found under the wheat and feed grain programs. However, it has been determined that for purposes of administrating an oilseed program as provided int he 1949 Act and with limited uses for oilseeds, it becomes necessary to establish quality requirements consistent with the ultimate disposition and use of the respective oilseed.

It has also been determined that all other provisions of the proposed rule should be adopted as the final rule with certain technical and grammatical correctoins.

List of Subjects in 7 CFR Part 1421

Grains, Loan programs/agriculture, Price support programs, Warehouses.

Accordingly, 7 CFR part 1421 is amended as follows:

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

1. The authority citation for 7 CFR part 1421 is revised to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1441z, 144f–1, 1445b–3a, 1445c–3, 1445e, and 1446f; 15 U.S.C. 714b and 714c.

2. The subpart consisting of §§ 1421.1 through 1421.32 and the subpart heading are revised and the subpart consisting of §§ 1421.320 through 1421.325 is revised as follows:

Subpart—Price Support Regulations for the 1991 and subsequent crops of Wheat, Feed Grains, Rice, Oilseeds (Canola, Flaxseed, Mustard Seed, Rapeseed, Safflower, Soybeans, and Sunflower Seed), and Farm-Stored Peanuts

Sec.

Subpart—Rice Marketing Certificate Program

Subpart—Price Support Regulations for the 1991 and subsequent crops of Wheat, Feed Grains, Rice, Oilseeds (Canola, Flaxseed, Mustard Seed, Rapeseed, Safflower, Soybeans, and Sunflower Seed), and Farm-Stored Peanuts

§ 1421.1 Applicability.

(a) The regulations of this subpart are applicable to the 1991 and subsequent crops of barley, corn, grain sorghum, oats, peanuts, rice, rye, soybeans, wheat, and oilseeds as set forth in § 1421.3. These regulations set forth the terms and conditions under which price support loans and purchase agreements shall be entered into and loan deficiency payments made by the Commodity Credit Corporation ("CCC"). Additional terms and conditions are set forth in the note and security agreement, loan deficiency payment application, and the purchase agreement which must be executed by a producer in order to receive price support. With respect to warehouse-stored loans for peanuts, such loans shall be made in accordance with part 1446 of this title.

(b) Basic county price support rates, the schedule of premiums and discounts, and forms which are used in administering the price support program for a crop of a commodity are available in State and county Agricultural Stabilization and Conservation Service ("ASCS") offices ("State and county offices", respectively). The forms for use in connection with the programs in this section shall be prescribed by CCC.

(c)(1) Price support loans and purchase agreements shall be available as provided in this Part with regard to barley, corn, grain sorghum, oats, rye, and wheat produced in the United States.

(2) Price support loans, loan deficiency payments, and purchase agreements shall be available only with respect to rice produced in the continental United States.

(3) Farm-stored price support loans and purchase agreements shall be available only with respect to farmer stock peanuts, as defined in part 1446 of this title, which are produced in the United States and which are also of a type specified in part 729 of this title.

(4) Price support loans and loan deficiency payments shall be available as provided in this Part with respect to oilseeds produced in the United States.

(d) Price support loans, loan deficiency payments, and purchase agreements shall not be available with respect to any commodity produced on land owned or otherwise in the possession of the United States if such land is occupied without the consent of the United States.

§ 1421.2 Administration.

(a) The price support and loan deficiency payment program which is applicable to a crop of a commodity shall be administered under the general supervision of the Administrator, ASCS, and shall be carried out in the field by State and county Agricultural Stabilization and Conservation committees ("State and county committees", respectively).

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, an action taken by such county committee which is not in accordance with the regulations of this part; or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulations of this part.

(d) No provision or delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, or a designee or the Administrator, ASCS, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator, State and County Operations, ASCS, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not affect adversely the operation of the price support program.

(f) A representative of CCC may execute price support loans, loan deficiency payment applications, and purchase agreements and related documents only under the terms and conditions determined and announced by CCC. Any such document which is not executed in accordance with such terms and conditions, including any purported execution prior to the date authorized by CCC, shall be null and void.

§ 1421.3 Definitions.

The definitions set forth in this section shall be applicable for all purposes of program administration. The terms defined in parts 719 and 1413 of this title shall also be applicable.

Basic support rate means the price support rate established by CCC for a commodity before any adjustment for premiums and discounts.

Charges means all fees, costs, and expenses incurred in insuring, carrying, handling, storing, conditioning, and marketing the commodity tendered to CCC for price support. Charges also include any other expenses incurred by CCC in protecting CCC's or the producer's interest in such commodity.

Loan deficiency quantity means the eligible quantity which was certified by the producer as eligible to be pledged as collateral for a price support loan, for which the producer elected to forgo obtaining price support.

Loan quantity means the quantity on which the price support loan was disbursed shown on the note and security agreement.

Oilseeds means any crop of soybeans, sunflower seed, canola, rapeseed, safflower, flaxseed, mustard seed, and other oilseeds as determined and announced by CCC.

Purchase quantity means the eligible quantity designated on Form CCC–614, Purchase Agreement for purchase by CCC.

§ 1421.4 Eligible producers.

(a) An eligible producer of a crop of a commodity shall be a person (i.e., an

individual, partnership, association, corporation, estate, trust, State or political subdivision or agency thereof, or other legal entity) which:

(1) Produces such a crop as a landowner, landlord, tenant, or sharecropper, or in the case of rice, furnishes land, labor, water, or equipment for a share of the rice crop;

(2) Meets the requirements of this part; and

(3) Meets the requirements of parts 12, 718, 1413, and 1446 of this title.

(b) A receiver or trustee of an insolvent or bankrupt debtor's estate, an executor or an administrator of a deceased person's estate, a guardian of an estate of a ward or an incompetent person, and trustees of a trust estate shall be considered to represent the insolvent or bankrupt debtor, the deceased person, the ward or incompetent, and the beneficiaries of a trust, respectively, and the production of the receiver, executor, administrator, guardian, or trustee shall be considered to be the production of the person or estate represented by the executor or administrator. Loan, loan deficiency payment, or purchase agreement documents executed by any such person will be accepted by CCC only if they are legally valid and such person has the authority to sign the applicable documents.

(c) A minor who is otherwise an eligible producer shall be eligible to receive price support or loan deficiency payment only if the minor meets one of the following requirements:

(1) The right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable price support documents are signed by the guardian;

(3) Any note signed by the minor is cosigned by a person determined by the county committee to be financially responsible; or

(4) A bond is furnished under which a surety guarantees to protect CCC from any loss incurred for which the minor would be liable had the minor been an adult.

(d) *Joint loans.*

(1) Two or more producers may obtain a single joint loan with respect to commodities which are stored in the same farm storage facility. Two or more producers may obtain individual loans with respect to their share of the commodity which is stored commingled in a farm storage facility with commodities owned by other producers if such other producers execute Form CCC–665 which provides that such producers shall obtain the permission of a representative of the county committee prior to removal of any quantity of the commodity from the storage facility. All producers who store a commodity in a farm storage facility in which commodities which have been pledged as collateral for a loan shall be liable for any damage incurred by CCC with respect to the deterioration or unauthorized removal or disposition of such commodities in accordance with § 1421.17.

(2) Two or more producers may obtain a single joint loan with respect to commodities which are stored in an approved warehouse if the warehouse receipt which is pledged as collateral for the loan is issued jointly to such producers.

(3) If more than one producer executes a note and security agreement with CCC, each such producer shall be jointly and severally liable for the violation of the terms and conditions of the note and the regulations set forth in this part. Each such producer shall also remain liable for repayment of the entire loan amount until the loan is fully repaid without regard to such producer's claimed share in the commodity pledged as collateral for the loan. In addition, such producer may not amend the note and security agreement with respect to the producer's claimed share in such commodities, or loan proceeds, after execution of the note and security agreement by CCC.

(e) *Denial of farm-stored loans.*

(1) The county committee may deny a producer price support on farm-stored commodities if the producer has:

(i) Been convicted of a criminal act, or has made a misrepresentation, with respect to:

(A) Acquiring a farm-stored loan or

(B) In the maintenance of the commodity pledged as security for a farm-stored loan; or

(ii) Failed to protect adequately the interests of CCC in the commodity pledged as security for a farm-stored loan.

(2) In such cases, the producer shall be ineligible for subsequent farm-stored loans unless the county committee determines that the producer will adequately protect CCC's interest in the commodity which would be pledged as collateral for such a loan. A producer who is denied a farm-stored loan will be eligible to pledge a commodity as collateral for a warehouse-stored loan.

(f) *Warehouse-stored loans to warehousemen.* Except as provided in § 1421.746, warehouse-stored loans may be made to a warehouseman who, in the capacity of a producer, tenders to CCC warehouse receipts issued by such warehouseman on a commodity produced by such warehouseman only in those States where the issuance and pledge of such warehouse receipts is valid under State law.

(g) *Approved cooperative.* A cooperative marketing association which has been approved in accordance with part 1425 of this title may obtain price support on the eligible production of such commodity or loan deficiency payment with respect to such commodity on behalf of the members of the cooperative who are eligible to receive price support with respect to a crop of a commodity. For purposes of this subpart and in applicable price support and loan deficiency payment forms, the term "producer" includes an approved cooperative marketing association.

(h) *Peanut producer.* With respect to peanuts tendered to CCC for price support, a producer must also meet the provisions of part 1446 of this title. Prior to obtaining a farm-stored loan with respect to additional peanuts, a producer must register as a handler with the State ASCS office of the State in which the producer's farm is located.

(i) *Restrictions in use of agents.* A producer shall not delegate to any person (or the person's representative) who has any interest in storing, processing, or merchandising any commodity which is otherwise eligible for price support or a loan deficiency payment under a program to which this section is applicable authority to exercise on the behalf of the producer any of the producer's rights or privileges under such program, including the authority to execute any note and security agreement or other price support document, unless the person (or the person's representative) to whom authority is delegated, is serving in the capacity of a farm manager for the producer or unless the authority delegated is restricted specifically for the purpose of repaying the loan amount and charges plus interest or, for the purpose of obtaining loan deficiency payments, and such delegation is filed through the execution of Form ASCS–211, Power of Attorney, or other form as approved by CCC, with the county office and accepted by CCC.

§ 1421.5 General eligibility requirements.

(a) A producer must, unless otherwise authorized by CCC, request price support and a loan deficiency payment at the county office which, in accordance with part 719 of this title, is responsible for administering programs for the farm on which the commodity was produced. An approved cooperative marketing association must, unless

otherwise authorized by CCC, request price support and loan deficiency payments at the county office for the county in which the principal office of the cooperative is located. In order to receive price support or loan deficiency payments for a crop of a commodity, a producer must execute a note and security agreement, loan deficiency payment application, or purchase agreement on or before:

(1) January 31 of the year following the year in which the crop of peanuts is normally harvested for additional peanuts pledged as collateral for a farm-stored loan;

(2) March 31 of the year following the year in which the following crops are normally harvested: Quota peanuts pledged as collateral for a farm-stored loan; barley; canola; flaxseed; oats; rapeseed; rye; and wheat;

(3) April 30 of the year following the year in which the crop of peanuts is harvested for quota peanuts tendered for purchase; and

(4) May 31 of the year following the year in which the following crops are normally harvested: Corn; grain sorghum; mustard seed; rice; safflower; soybeans; and sunflower seed.

(b)(1) Commodities must be tendered to CCC by an eligible producer and must be eligible, in existence, and in approved storage at the time of disbursement of loan, loan deficiency payment, or purchase agreement proceeds. Such commodities must also be merchantable for food, feed, or other uses determined by CCC and must not contain mercurial compounds, toxin producing molds, or other substances poisonous to humans or animals. Wheat must not contain more than two rodent pellets or comparable amounts of other filth per 1,000 grams of wheat.

(2) The determination of class, grade, grading factors, milling yields, and other quality factors, including the determination of type, quality and quantity for peanuts:

(i) With respect to barley, corn, flaxseed, grain sorghum, oats, rice, rye, soybeans, sunflower seed for extraction of oil, and wheat, shall be based upon the Official United States Standards for Grain and the Official United States Standards for Rice as applied to rough rice whether or not such determinations are made on the basis of an official inspection. The costs of an official grade determination shall not be paid by CCC.

(ii) With respect to a crop of canola, mustard seed, rapeseed, safflower seed, and sunflower seed used for a purpose other than to extract oil, shall be based on quality requirements established and announced by CCC, whether or not such determinations are made on the basis of an official inspection. The costs of an official quality determination shall not be paid by CCC. The quality requirements which are used in administering the price support program for the oilseeds in this subparagraph are available in State and county ASCS offices.

(iii) With respect to peanuts, shall be determined at the time of delivery to CCC by a Federal-State Inspector authorized or licensed by the Secretary.

(3) Corn pledged as collateral for a farm-stored loan may be ear or shelled corn, but may not be ground ear corn. If the collateral is ear corn, the producer must:

(i) Before delivery to CCC, shell such corn without cost to CCC; and

(ii) Before removal of the commodity for shelling, have the approval of CCC in accordance with § 1421.20. Corn pledged as collateral for a warehouse-stored loan or tendered in accordance with a purchase agreement must be shelled corn.

(4) When a quantity of a commodity is determined by weight, the following shall apply:

(i) A bushel of barley shall be 48 pounds of barley free of dockage;

(ii) A bushel of corn shall be 56 pounds of corn free of dockage;

(iii) A bushel of oats shall be 32 pounds of oats;

(iv) Quantities of peanuts shall be in tons and tenths of a ton;

(v) Quantities of farm-stored rice shall be in whole units of 100 pounds of rice;

(vi) A bushel of rye shall be 56 pounds of rye free of dockage;

(vii) A bushel of soybeans shall be 60 pounds of soybeans that contain no more than one percent foreign material.

(viii) A bushel of grain sorghum shall be 56 pounds of grain sorghum free of dockage; and

(ix) A bushel of wheat shall be 60 pounds of wheat free of dockage.

(x) Quantities off farm-stored canola, flaxseed, mustard seed, rapeseed, safflower seed, and sunflower seed shall be in whole units of 100 pounds of the respective commodity.

(A) A bushel of canola shall be 50 pounds of canola free of dockage.

(B) A bushel of flaxseed shall be 56 pounds of flaxseed free of dockage.

(C) A bushel of mustard seed shall be 54 pounds of mustard seed free of dockage.

(D) A bushel of rapeseed shall be 50 pounds of rapeseed free of dockage.

(E) A bushel of safflower seed shall be 40 pounds of safflower seed free of dockage.

(F) A bushel of sunflower seed shall be 28 pounds of sunflower seed free of foreign material.

(5) With respect to farm-stored loans, purchase agreements, and loan deficiency payments, all determinations of weight and quality, except as otherwise agreed to by CCC, shall be determined at the time of delivery of the commodity to CCC or at the time the loan deficiency payment application is filed.

(c)(1) To be eligible to receive price support, a producer must have the beneficial interest in the commodity which is tendered to CCC for a loan, loan deficiency payment, or purchase. The producer must always have had the beneficial interest in the commodity unless, before the commodity was harvested, the producer and a former producer whom the producer tendering the commodity to CCC has succeeded had such an interest in the commodity. Commodities obtained by gift or purchase shall not be eligible to be tendered to CCC for price support. Heirs who succeed to the beneficial interest of a deceased producer or who assume the decedent's obligations under an existing loan, loan deficiency payment, or purchase agreement shall be eligible to receive price support whether succession to the commodity occurs before or after harvest so long as the heir otherwise complies with the provisions of this part.

(2) A producer shall not be considered to have divested the beneficial interest in the commodity if the producer retains control of the commodity, including the right to make all decisions regarding the tender of such commodity to CCC for price support, and the producer:

(i) Executes an option to purchase whether or not an advance payment is made by the potential buyer with respect to such commodity if the option to purchase contains the following provision:

"Notwithstanding any other provision of this option to purchase, title; risk of loss; and beneficial interest in the commodity, as specified in 7 CFR part 1421, shall remain with the producer until the buyer exercises this option to purchase the commodity. This option to purchase shall expire, notwithstanding any action or inaction by either the producer or the buyer, at the earlier of: (1) The maturity of any Commodity Credit Corporation price support loan which is secured by such commodity; (2) the date the Commodity Credit Corporation claims title to such commodity; or (3) such other date as provided in this option."; or

(ii) Enters into a contract to sell the commodity if the producer retains title, risk of loss, and beneficial interest in the commodity and the purchaser does not

pay to the producer any advance payment amount or any incentive payment amount to enter into such contract except as provided in part 1425 of this title.

(3) If price support is made available to producers through an approved marketing cooperative in accordance with part 1425 of this title, the beneficial interest in the commodity must always have been in the producer-member who delivered the commodity to the cooperative or its member cooperatives, except as otherwise provided in this subsection. Commodities delivered to such a cooperative shall not be eligible to receive price support if the producer-member who delivered the commodity does not retain the right to share in the proceeds from the marketing of the commodity as provided in part 1425 of this title.

(d)(1) A producer may, before the final date for obtaining a price support loan for a commodity, reoffer as collateral for such a loan any commodity that had been previously pledged as collateral for a price support loan, except with respect to:

(i) Commodities which have been acquired in accordance with part 1470 of this title,

(ii) Commodities which have been redeemed at a rate which is less than the original price support level in accordance with § 1421.25, and

(iii) Commodities for which a payment has been made in accordance with § 1421.29.

(2) With respect to loans transferred in accordance with § 1421.17(c) and (d), the subsequent loan shall have the same maturity date as the original loan.

(e) Producers who redeem loan collateral at the lower loan repayment level in accordance with § 1421.25 or, in lieu of receiving price support receive a loan deficiency payment in accordance with § 1421.29, shall provide CCC with:

(1) Evidence of production of the collateral such as sales receipts or other written documentation acceptable to CCC, or

(2) The storage location of the collateral which has not been otherwise disposed of and allow CCC access to such collateral.

(f) Producers who receive a loan deficiency payment for a commodity in accordance with paragraph (e) of this section must provide evidence of production acceptable to CCC within 12 months from the final loan availability date for crop year for such commodity. Production evidence shall include but is not limited to:

(1) Evidence of sales,

(2) Load summary sheets, and

(3) Warehouse receipts from approved or unapproved warehouses.

(g) If the producer fails to provide acceptable evidence of production as required in paragraph (e)(1) of this section, such producer shall be required to repay the market gain or loan deficiency payment and charges, plus interest.

(h) The loan documents shall not be presented for disbursement unless the commodity subject to the note and security agreement is an eligible commodity, in existence, and is in approved storage. If the commodity was not either an eligible commodity, in existence, or in approved storage at the time of disbursement, the total amount disbursed under the loan and charges plus interest shall be refunded promptly by the producer.

(i) CCC shall limit the total loan quantity for a loan disbursement, purchase quantity for a purchase agreement disbursement, or loan deficiency quantity for a loan deficiency payment disbursement based on a subsequent increase in the quantity of eligible commodity by the final loan availability date to 120 percent of the outstanding quantity of such loan, purchase agreement, or loan deficiency payment application. A producer may obtain a separate loan, loan deficiency payment, or purchase agreement before the final loan availability date for quantities in excess of 120 percent of such quantity if such quantities are an otherwise eligible commodity.

§ 1421.6 Maturity and expiration dates.

(a)(1) All loans shall mature on demand by CCC and with respect to:

(i) All commodities except peanuts and loan collateral transferred in accordance with § 1421.17(c) and (d), no later than the last day of the ninth calendar month following the month in which the note and security agreement is filed in accordance with § 1421.5(a) and approved; and

(ii) Peanuts, April 30 of the year following the year the commodity is normally harvested.

(2) CCC may at any time accelerate the loan maturity date by providing the producer notice of such acceleration at least 15 days in advance of the accelerated maturity date.

(3) The request for a loan shall not be approved until all producers having an interest in the collateral sign the note and security agreement and CCC approves such note and security agreement.

(b)(1) With respect to all eligible commodities except peanuts, purchase agreements expire on the last day of the ninth calendar month following the month in which the purchase agreement is approved. With respect to peanuts, purchase agreements expire on April 30 of the year following the year the commodity is normally harvested.

(2) CCC may at any time accelerate the expiration date of the purchase agreement by providing the producer notice of such acceleration at least 15 days in advance of the accelerated expiration date.

(c) 1991 and subsequent year wheat, corn, grain sorghum, barley and oat loans may only be extended by CCC beyond the maturity date specified in paragraph (a) of this section as CCC determines necessary for allowing producers an opportunity to participate in the farmer owned reserve program conducted in accordance with §§ 1421.200 through 1421.216. In such cases only, CCC may extend a price support loan:

(1) For wheat to the last day in February following the year in which the crop is normally harvested, and

(2) For corn, grain sorghum, barley, and oats, to May 31 following the year in which the crop is normally harvested.

(d) If a producer fails to settle the loan in accordance with paragraph (a) of this section within 30 days from the maturity date of such loan, or other reasonable time period as established by CCC, a claim for the loan amount and charges plus interest shall be established. CCC shall:

(1) Inform the producer before the maturity date of the loan of the date by which the loan must be settled or a claim will be established in accordance with part 1403 of this title, and

(2) If the producer delivers the loan collateral in accordance with § 1421.22 after a claim is established:

(i) Determine the value of such collateral in accordance with § 1421.22,

(ii) Waive interest on the loan amount which accrued prior to the establishment of the claim with respect to the settlement value of the quantity delivered from the date such loan proceeds were disbursed through the loan maturity date. Interest which accrues after the establishment of the claim shall not be waived, and

(iii) Reduce the outstanding claim amount arising from the loan by the amount of the settlement value of the quantity delivered plus the amount of interest that was waived.

§ 1421.7 Adjustment of basic support rates.

(a) Basic support rates for a commodity may be established on a State, regional, or county basis and may be adjusted by CCC to reflect quality

and location applicable to the commodity and as otherwise provided in this section.

(b) If CCC determines that State, district, or county weed control laws affect the value of a commodity, the basic support rate shall be reduced to reflect the reduction in value of the commodity unless the producer or storing warehouseman furnishes a certification from the appropriate weed control official that the commodity complies with weed control laws. The storing warehouseman must also agree to hold CCC harmless for any loss or penalty which arises from the violation of such laws. The certification by the warehouseman shall be in substantially the following form:

Certification

This is to certify that the commodity evidenced by warehouse receipt No. XX issued to XX is not subject to seizure or other action under weed control laws or regulations in effect at the point of storage. It is further certified and agreed that if such commodity is acquired by CCC in settlement of a loan or purchase agreement, the undersigned will save CCC from loss or penalty under weed control laws or regulations in effect at the point the commodity was stored under the above warehouse receipt. (Signature) XXXX

(c)(1) With respect to all commodities except peanuts, farm-stored loans shall be disbursed at the basic county support rate for the county where the commodity is stored adjusted for weed control law discounts.

(2) With respect to quota and additional peanuts, farm-stored loans shall be disbursed at the basic support rates established by CCC for such peanuts.

(d)(1) With respect to all commodities except peanuts, warehouse-stored loans and purchase agreement payments shall be disbursed on the basis of the basic county support rate for the county where the commodity is stored adjusted for:

(i) Weed control law discounts, and

(ii) The schedule of premiums and discounts established for the commodity on the basis of quality factors set forth on warehouse receipts or supplemental certificates and for other quality factors, as determined and announced by CCC.

(2) With respect to quota and additional peanuts, payments made in accordance with a purchase agreement shall be at the basic support rate established by CCC for such peanuts.

(3) With respect to commodities moved from one warehouse to another in accordance with the terms and conditions prescribed by CCC on Form CCC–699, Reconcentration Agreement and Trust Receipt, the support rate will be adjusted to reflect the new storage location.

§ 1421.8 Approved storage.

(a) Approved farm storage shall consist of a storage structure located on or off the farm (excluding public or commercial warehouses) which is determined by CCC to be under the control of the producer and to afford safe storage of the commodity pledged as collateral for a price support loan. As may be determined and announced by the Executive Vice President, CCC, approved farm storage may also include on-ground storage, temporary storage structures, or other storage arrangements. If the commodity which is to be pledged as collateral for a price support loan is stored on leased space:

(1) A copy of the lease shall be obtained by the county office before a loan is made. The lease shall authorize the producer and any person having an interest in the commodity, including CCC, to enter the premises to inspect and examine the commodity and shall permit a reasonable time to such persons to remove the commodity from the premises upon the termination of the lease, and

(2) The county office may require from the lessor, a lien waiver that fully protects the interest of CCC.

(b) Approved warehouse storage shall consist of:

(1) A public warehouse for which a CCC storage agreement for the commodity is in effect and which is approved by CCC for price support purposes. Such a warehouse is referred to in this subpart as an "approved warehouse". The names of approved warehouses may be obtained from the Kansas City Commodity Office, P.O. Box 419205, Kansas City, Missouri 64141–6205, or from State and county offices.

(2) A warehouse operated by an approved cooperative as defined in part 1425 of this chapter and licensed to store the commodity under the United States Warehouse Act.

(c) The approved storage requirements provided in this section may be waived by CCC if the producer agrees to redeem the loan collateral pursuant to the lower loan repayment provisions contained in § 1421.25 or, requests a loan deficiency payment pursuant to the loan deficiency payment provisions contained in § 1421.29.

§ 1429.9 Warehouse receipts.

(a) Warehouse receipts tendered to CCC with respect to a loan, loan deficiency payment, or purchase agreement must meet the provisions of this section and all other provisions of this part, and CCC program documents.

(b) Warehouse receipts must be issued in the name of the eligible producer or CCC. If issued in the name of the eligible producer, the receipts must be properly endorsed in blank in order to vest title in the holder. Receipts must be issued by an approved warehouse and must represent a commodity which is deemed to be stored commingled. The receipts must be negotiable and must represent a commodity which is the same quantity and quality as the eligible commodity actually in storage in the warehouse of the original deposit. However, warehouse receipts may be issued by another warehouse if the eligible commodity was reconcentrated in accordance with the provisions of § 1421.20(c).

(c) If the receipt is issued for a commodity which is owned by the warehouseman either solely, jointly, or in common with others, the fact of such ownership shall be stated on the receipt. In States where the pledge of warehouse receipts issued by a warehouseman on the warehouseman's commodity is invalid, the warehouseman may offer the commodity to CCC for loan or purchase if such warehouse is licensed and operating under the U.S. Warehouse Act. In such States, if the warehouseman is not licensed and operating under the U.S. Warehouse Act, the warehouseman may deliver the commodity to CCC for purchase if the warehouse receipt is issued in the name of CCC.

(d) Each warehouse receipt or accompanying supplemental certificate representing a commodity stored in an approved warehouse which has a storage agreement with CCC shall indicate that the commodity is insured in accordance with such agreement. The cost of such insurance shall not be for the account of CCC.

(e) A separate warehouse receipt must be submitted for each grade and class of any commodity tendered to CCC and, with respect to rice, such receipt must also state the milling yield of the rice.

(f)(1) Each warehouse receipt, or a supplemental certificate (in duplicate) which properly identifies the warehouse receipt, must be issued in accordance with the Uniform Grain Storage Agreement, Uniform Rice Storage Agreement, or the U.S. Warehouse Act for warehouses licensed under U.S. Warehouse Act, as applicable, and must indicate:

(i) The name and location of the storing warehouse;

(ii) The warehouse code assigned by CCC;
(iii) The warehouse receipt number;
(iv) The date the receipt was issued;
(v) The date the commodity was deposited or received;
(vi) The date to which storage has been paid or the storage start date;
(vii) Whether the commodity was received by rail, truck or barge;
(viii) The amount per bushel, pound, or hundredweight of prepaid in or out charges;
(ix) The signature of the warehouse operator or the authorized agent; and
(x) For warehouses operating under a merged warehouse code agreement (KCFL–614), the location and county to which the producer delivered the commodity.
(2) In addition to the information specified in paragraph (f)(1) of this section, the following information must be provided with respect to the specified commodity:
(i) Barley:
(A) Gross weight in pounds and net bushels;
(B) Class and subclass;
(C) Grade (including special grades);
(D) Test weight;
(E) Moisture;
(F) Dockage; and
(G) Any other grading factor when such factor (not test weight) determines the grade.
(ii) Corn:
(A) Kind of Corn;
(B) Gross weight in pounds, and net bushels;
(C) Class;
(D) Grade (including special grades);
(E) Test weight;
(F) Moisture;
(G) Broken corn and foreign material; and
(H) Any other grading factor when such factor (not test weight) determines the grade.
(iii) Oats:
(A) Net weight and bushels;
(B) Grade (including special grades);
(C) Test weight;
(D) Moisture; and
(E) Any other grading factor when such factor (not test weight) determines the grade.
(iv) Rice:
(A) Grade;
(B) Net weight and net hundredweight;
(C) Class;
(D) Grading factors, including color, smut, and heat damage;
(E) Milling yield;
(F) Moisture; and
(G) If the rice is stored commingled.
(v) Rye:
(A) Gross weight and net bushels;
(B) Grade (including special grades);
(C) Test weight;
(D) Moisture;
(E) Dockage; and
(F) Any other grading factor when such factor (not test weight) determines the grade.
(vi) Grain sorghum:
(A) Gross weight in pounds and net weight in hundredweight;
(B) Class;
(C) Grade;
(D) Test weight;
(E) Moisture;
(F) Dockage; and
(G) Any other grading factor when such factor (not test weight) determines the grade.
(vii) Soybeans:
(A) Net weight and bushels;
(B) Gross weight and bushels;
(C) Grade (including special grades);
(D) Test weight;
(E) Moisture;
(F) Percentage of foreign material; and
(G) Any other grading factor when such factor (not test weight) determines the grade.
(viii) Wheat:
(A) Gross weight and net bushels;
(B) Class and Subclass;
(C) Grade;
(D) Test weight;
(E) Moisture;
(F) Dockage;
(G) Protein content; and
(H) Any other grading factor when such factor (not test weight) determines the grade.
(ix) Canola:
(A) Gross weight and net weight in hundredweight;
(B) Oil Content;
(C) Moisture;
(D) Dockage;
(E) Glucosinolate;
(F) Percentage of:
(*1*) Heat damage;
(*2*) Distinctly green seeds;
(*3*) Total damage;
(*4*) Stones;
(*5*) Ergot;
(*6*) Sclerotinia bodies;
(*7*) Total conspicuous admixtures;
(*8*) Inconspicuous admixtures;
(*9*) Erucic acid;
(G) Count of:
(*1*) Garlic bulbs;
(*2*) Animal filth;
(*3*) Glass; and
(*4*) Unknown foreign substance.
(x) Flaxseed:
(A) Gross weight and net weight in hundredweight;
(B) Grade;
(C) Test Weight;
(D) Moisture;
(E) Dockage; and
(F) Any other grading factor when such factor (not test weight) determines the grade.
(xi) Mustard Seed:
(A) Gross weight and net weight in hundredweight;
(B) Class;
(C) Moisture;
(D) Dockage;
(E) Percentage of:
(*1*) Class purity;
(*2*) Heat damage;
(*3*) Distinctly green seeds;
(*4*) Total damage;
(*5*) Other weed seed;
(*6*) Stones;
(*7*) Ergot;
(*8*) Sclerotinia bodies;
(*9*) Inconspicuous admixtures;
(F) Count of:
(*1*) Animal filth;
(*2*) Glass; and
(*3*) Unknown foreign substance.
(xii) Rapeseed:
(A) Gross weight and net weight in hundredweight;
(B) Oil Content;
(C) Moisture;
(D) Dockage;
(E) Percentage of:
(*1*) Heat damage;
(*2*) Distinctly green seeds;
(*3*) Total damage;
(*4*) Stones;
(*5*) Ergot;
(*6*) Sclerotinia bodies;
(*7*) Total conspicuous admixtures;
(*8*) Inconspicuous admixtures;
(*9*) Erucic acid;
(F) Count of:
(*1*) Animal filth;
(*2*) Glass; and
(*3*) Unknown foreign substance.
(xiii) Safflower Seed:
(A) Gross weight and net weight in hundredweight;
(B) Oil Content;
(C) Moisture;
(D) Dockage;
(E) Percentage of:
(*1*) Heat damage;
(*2*) Total damage;
(*3*) Other grains;
(*4*) Free fatty acid;
(F) Count of:
(*1*) Animal filth;
(*2*) Glass;
(*3*) Unknown foreign substance; and
(G) WIJS Iodine Value.
(xiv) Sunflower Seed:
(A) Used to extract oil:
(*1*) Gross weight and net weight in hundredweight;
(*2*) Grade;
(*3*) Test Weight;
(*4*) Oil Content;
(*5*) Moisture;
(*6*) Foreign Material;
(*7*) Any other grading factor when such factor (not test weight) determines the grade;

(B) Used for a purpose other than to extract oil:

(*1*) Gross weight and net weight in hundredweight;

(*2*) Moisture;

(*3*) Test Weight;

(*4*) Dockage;

(*5*) Admixtures;

(*6*) Foreign material;

(*7*) Heat Damage;

(*8*) Total Damage;

(*9*) Insect Damage;

(*10*) Sieve Size;

(*11*) Sclerotinia Bodies; and

(*12*) Black Seeds.

(g) If a warehouse receipt indicates that the commodity tendered for price support grades "Infested" or contains excess moisture, or both, the receipt must be accompanied by a supplemental certificate as provided in § 142.18 in order for the commodity to receive price support. The grade, grading factors, and quantity to be delivered must be shown on the certificate as follows:

(1) When the warehouse receipt shows "Infested" and the commodity has been conditioned to correct the "Infested" condition, the supplemental certificate must show the same grade without the "Infested" designation and the same grading factors and quantity as shown on the warehouse receipt.

(2)(i) When the warehouse receipt shows that the commodity contained excess moisture and the commodity has been dried or blended, the supplemental certificate must show the grade, grading factors, and quantity after drying or blending of the commodity. Such entries shall reflect a drying or blending shrinkage as provided in paragraph (g)(2)(iv) of this section.

(ii) When a supplemental certificate is issued in accordance with paragraphs (g)(1) and (2)(i) of this section, the grade, grading factors and the quantity shown on such certificate shall supersede the entries for such items on the warehouse receipt.

(iii) If the commodity has been dried or blended to reduce the moisture content, the quantity specified on the warehouse receipt or the supplemental certificate shall represent the quantity after drying or blending.

(iv) For commodities dried or blended in accordance with paragraph (g)(2)(iii) of this section, such quantity shall reflect a minimum shrinkage in the receiving weight excluding dockage:

(A) For the following commodities, 1.2 times the percentage difference between the moisture content of the commodity received and the following percentages for the specified commodity:

(*1*) Barley: 14.5 percent;

(*2*) Corn: 15.5 percent;

(*3*) Grain sorghum: 14.0 percent;

(*4*) Oats; 14.0 percent;

(*5*) Rice: 14.0 percent;

(*6*) Rye: 14.0 percent;

(*7*) Soybeans; 14.0 percent; and

(*8*) Wheat: 13.5 percent.

(B) For the following commodities, 1.1 times the percentage difference between the moisture content of the commodity received and the following percentages for the specified commodity:

(*1*) Canola: 10.0 percent;

(*2*) Flaxseed: 9.0 percent;

(*3*) Mustard Seed: 10.0 percent;

(*4*) Rapeseed: 10.0 percent;

(*5*) Safflower Seed: 10.0 percent; and

(*6*) Sunflower Seed: 10.0 percent.

(h)(1) If, in accordance with paragraph (g) of this section, a supplemental certificate is issued in connection with a warehouse receipt, such certificate must state that no lien for processing will be asserted by the warehouseman against CCC or any subsequent holder of such receipt.

(2) Warehouse receipts and the commodities represented by such receipts which are stored in an approved warehouse which is operating in accordance with a Uniform Grain Storage Agreement ("UGSA") or a Uniform Rice Storage Agreement ("URSA") may be subject to a lien for warehouse charges only to the extent provided in § 1421.10. In no event shall a warehouseman be entitled to satisfy such a lien by sale of the commodities when CCC is the holder of such receipt.

(i) Warehouse receipts representing commodities which have been shipped by rail and/or by barge, must be accompanied by supplemental certificates completed in accordance with paragraph (f) of this section.

§ 1421.10 Warehouse charges.

(a) CCC-approved handling and storage rates that may be deducted from loan and purchase proceeds are available in State and county offices. Such deductions shall be based upon the entries on the warehouse receipt or supplemental certificate, but in no case shall be higher than the CCC approved rate. No storage deduction shall be made if written evidence acceptable to CCC is submitted that:

(1) Storage charges through the maturity or expiration date have been prepaid; or

(2) The producer has arranged with the warehouseman for the payment of storage charges through the maturity or expiration date and the warehouseman enters an endorsement in substantially the following form on the warehouse receipt:

Warehouse storage charges accrued or to accrue prior to the acquisition by CCC of the commodity represented by this warehouse receipt have been paid or otherwise provided for through the applicable maturity or expiration date and a lien for such charges will not be asserted by the warehouseman against CCC or against any subsequent holder of the warehouse receipt.

(b) The beginning date to be used for computing storage deductions on the commodity stored in an approved warehouse shall be the later of the following:

(1) The date the commodity was received or deposited in the warehouse;

(2) The date the storage charges start; or

(3) The day following the date through which storage charges have been paid.

(c) For commodities delivered to CCC in settlement for a loan, CCC shall pay to the producer the warehouse charges for receiving the commodity, or in-charges. If the warehouse receipt delivered to CCC in settlement for a loan shows that such charges:

(1) Have been paid, CCC shall issue such payment to the producer, or

(2) Have not been paid, the producer agrees to assign such payment to the warehouse and CCC shall issue such payment to the warehouse for the producer's account.

§ 1421.11 Liens.

(a) The country office shall file or record, as required by State law, all security agreements which are issued with respect to commodities pledged as collateral for price support loans. The cost of filing and recording shall be paid for by CCC.

(b) If there are any liens or encumbrances on the commodity, waivers that fully protect the interest of CCC must be obtained even though the liens or encumbrances are satisfied from the loan or purchase proceeds. No additional liens or encumbrances shall be placed on the commodity after the loan is approved.

§ 1421.12 Fees, charges, and interest.

(a) A producer shall pay a nonrefundable loan service fee to CCC at a rate determined by CCC. The amount of such fees are available in State and county offices and are shown on the note and security agreement.

(b) Interest which accrues with respect to a loan shall be determined in accordance with part 1405 of this title. All or a portion of such interest may be waived with respect to a quantity of commodity which has been redeemed in accordance with § 1421.25 at a level which is less than the principal amount of the loan plus charges and interest.

(c) For each crop of oilseeds, the producer must pay a nonrefundable loan

origination fee to CCC which shall be deducted from the loan proceeds and shall be at a rate equal to two percent of the loan level for the crop multiplied by the quantity of such crop for which the loan is made. In addition, for each crop of oilseeds on which a loan deficiency payment is made in accordance with § 1421.29, the producer must pay a nonrefundable amount equal to the loan origination fee in accordance with this subsection, that such producer would have been required to pay for the quantity on which the payment is made had such quantity been pledged as collateral for a price support loan. CCC shall deduct such amount from the loan deficiency payment amount.

(d) For each crop of soybeans, the producer, as defined in the Soybean Promotion, Research, and Consumer Information Act (7 U.S.C. 6301), shall remit to CCC an assessment which shall be deducted from the loan proceeds for a crop of soybeans, and shall be at a rate equal to one-half of one percent of the principal amount of the loan.

(e) Additional fees representing amounts voted on by producers for marketing or promotional fees may be deducted from price support proceeds by CCC as requested and agreed to by the governing body of such marketing or promotional fee and CCC. Deduction of such fees from amounts due producers and the payment of such fees to such governing body shall be made by CCC in a manner and at such time as determined by CCC.

§ 1421.13 Insurance on farm-stored loans.

CCC does not require the producer to insure the commodity placed under a farm-stored loan, however, if the producer insures such commodity and an indemnity is paid thereon, such indemnity shall inure to the benefit of CCC to the extent of its interest.

§ 1421.14 Offsets.

(a) If any installment on any loan made in accordance with part 1474 of this title by CCC on farm storage facilities or drying equipment is due and payable, the amount of such installment shall be deducted from the loan proceeds or payments made to the producer under this subpart.

(b) If the producer is indebted to CCC or to any other agency the United States and such indebtedness is listed on the county claim control record, amounts due the producer under the regulations in this subpart after deductions made for amounts provided in paragraph (a) of this section shall be applied as provided in parts 13 and 1403 of this title, to such indebtedness.

§ 1421.15 Loss or damage to the commodity.

The producer is responsible for any loss in quantity or quality of the commodity placed under a farm-stored loan or identity preserved warehouse-stored loan, or for any loss in quality of the commodity pledged as collateral for a modified commingled warehouse-stored loan. CCC shall not assume any loss in quanity or quality of the loan collateral.

§ 1421.16 Personal liability of the producers.

(a)(1) If a producer:

(i) Makes any fraudulent representation in obtaining a loan, purchase agreement, or loan deficiency payment, maintaining, or settling a loan; or

(ii) Disposes or moves the loan collateral without the approval of CCC, such loan shall be payable upon demand by CCC. The producer shall be liable for:

(A) The amount of the loan, purchase agreement, or loan deficiency payment;

(B) Any additional amounts paid by CCC with respect to the loan, purchase agreement, or loan deficiency payment;

(C) All other costs which CCC would not have incurred but for the fraudulent representation or the unauthorized disposition or movement of the loan collateral; and

(D) Interest on such amounts; and

(E) With regard to amounts due for a loan, the payment of such amounts may not be satisfied by the forfeiture of loan collateral to CCC of commodities with a settlement value that is less than the total of such amounts or by repayment of such loan at the lower loan repayment rate as prescribed in § 1421.25.

(2) Notwithstanding any provisions of the note and security agreement, if a producer has made any such fraudulent representation or if the producer has disposed of, or moved, the loan collateral without prior written approval from CCC in accordance with § 1421.20, the value of such collateral delivered to or removed by CCC shall be determined by CCC on the following basis:

(i) With respect to farm-stored loans, the lower of:

(A) The market value of the commodity, as determined by CCC, as of the date of delivery to, or removal by, CCC; or

(B) The loan settlement value of the commodity.

(ii) With respect to warehouse-stored loans, the lower of:

(A) The market value of the commodity at the close of market on the final date for repayment; or

(B) The loan settlement value of the commodity.

(iii) Notwithstanding the provisions of paragraphs (a)(2)(i) and (ii) of this section, if CCC sells the loan collateral in order to determine the market value of the commodity, the value of the commodity shall be the lower of:

(A) The sales price of the commodity less any costs incurred by CCC in completing the sale; or

(B) The loan settlement value of the commodity.

(b)(1) If a producer makes any fraudulent representation with respect to obtaining a purchase agreement or delivery of a commodity in accordance with such an agreement, the producer shall be liable for:

(i) The purchase amount paid to the producer by CCC;

(ii) All other costs which CCC would not have incurred but for the producer's fraudulent representation; and

(iii) Interest of such amounts. The payment of such amounts may not be satisfied by the delivery, in accordance with such an agreement, of commodities to CCC with a settlement value that is less than the total of such amounts.

(2) If a producer has made any such fraudulent representation, the value of the commodity shall be the lowest of the following, as determined by CCC:

(i) The market value of the commodity, as determined by CCC, at the close of the market on the date of delivery to CCC;

(ii) The sales price of the commodity less any costs incurred by CCC if the commodity is sold by CCC in order to determine the market value of the commodity; or

(iii) The basic support rate applicable to the commodity.

(c) A producer shall be personally liable for any damages resulting from a commodity delivered to or removed by CCC containing mercurial compounds, toxin producing molds, or other substances poisonous to humans or animals.

(d) If the amount disbursed under a loan or purchase agreement, or in settlement thereof, or loan deficiency payment exceeds the amount authorized by this part, the producer shall be liable for repayment of such excess and charges, plus interest.

(e) If the amount collected from the producer in satisfaction of the loan is less than the amount required in accordance with this part, the producer shall be personally liable for repayment of the amount of such deficiency and charges, plus interest.

(f) In the case of joint loans or loan deficiency payments the personal

liability for the amounts specified in this section shall be joint and several on the part of each producer signing the note or loan deficiency payment application.

§ 1421.17 Farm-stored commodities.

(a) The quantity of a commodity which shall be used to determine the amount of a farm-stored loan shall not exceed a percentage (the "loan percentage"), as established by the State committee which shall not exceed a percentage established by CCC, of the certified or measured quantity of the eligible commodity stored in approved farm storage and covered by the note and security agreement. The quantity of a commodity pledged as security for a farm-storage loan shall be measured or certified in accordance with paragraph (e) of this section. Farm-stored loans may be made on less than the maximum quantity eligible for loan at the producer's request. If the loan quantity is reduced by the State committee the county committee, or by request of the producer, the note and security agreement shall cover all of the commodity in a bin, crib, or lot on which the loan is made.

(1) With respect to additional peanuts, loans shall be made on 100 percent of the estimated quantity pledged as collateral for a farm-stored loan.

(2) With respect to all other commodities, the State committee may establish a loan percentage, which does not exceed a percentage established by CCC, each year for each commodity on a Statewide basis or for specified areas within the State. Before the establishment of a loan percentage, the State committee shall consider conditions in the State or areas within a State to determine if the loan percentage should be below the maximum loan percentage in order to provide CCC with adequate protection. Loan percentages previously determined shall be lowered if warranted by changed conditions in the State or areas within a State, but new loan percentages shall apply only to new loans and not to outstanding loans. The factors to be considered by the State committee in determining loan percentages shall include but are not limited to:

(i) General crop conditions;

(ii) Factors affecting quality peculiar to an area within the State; and

(iii) Climatic conditions affecting storability.

(3) The loan percentages established by the State committee may be reduced by the county committee on an individual farm or producer basis when determined to be necessary in order to provide CCC with adequate protection. The factors to be considered by the county committee in reducing the loan percentages shall include but not be limited to:

(i) The condition or suitability of the storage structure;

(ii) The condition of the commodity; and

(iii) The hazardous location of the storage structure, such as a location which exposes the structure to danger of flood, fire, and theft by a person not entrusted with possession of the commodity.

(iv) Any disagreement with respect to the quantity of the commodity to be pledged as collateral for a loan; and

(v) Such other factors which relate to the preservation or safety of the loan collateral.

(b) If an eligible quantity of a commodity except peanuts, has been commingled with an ineligible quantity of the commodity, the commingled commodity is not eligible to be pledged as collateral for a loan unless:

(1) The producer before commingling has received prior approval from the county office to commingle the commodity as evidenced by an approved form CCC–687–1, Approval to Commingle or Move Loan Collateral, and the eligible or ineligible commodity has been measured by a representative of the county office at the producer's expense, before commingling; or

(2) The producer has made a certification with respect to the acreage planted to the commodity which is to be commingled for all farms in which the producer has an interest. When certifying to the acreage on all farms in which interest is held, the producer must provide acceptable evidence of the production and purchase of the commodity from which the county committee may determine whether the eligible production claimed by the producer is reasonable in relation to the production practices on such farm or similar farms in the same county; or have either the eligible or ineligible commodity measured by a representative of the county office at the producer's expense, before commingling. Peanuts pledged as collateral for a loan must be stored separately from peanuts produced on any other farm and handled in such a manner that only the actual peanuts produced on the farm and on no other farm will be delivered to CCC.

(c) Upon request by the producer before transfer, the county committee may approve the transfer of a commodity or part thereof which is pledged as collateral for a farm-stored loan to a warehouse-stored loan at any time during the loan period. The producer must immediately repay the amount by which the farm-stored loan is less than the warehouse-stored loan and charges plus interest on the shortage. The maturity date of the warehouse-stored loan shall be the maturity date applicable to the farm-stored loan which was transferred.

(1) Liquidation of the farm-stored loan or part thereof shall be made through the pledge of warehouse receipts for the commodity placed under warehouse-stored loan and the immediate payment by the producer of the amount by which the warehouse-stored loan is less than the farm-stored loan or part thereof and charges plus interest. The loan quantity for the warehouse-stored loan cannot exceed:

(i) 120 percent of the loan quantity for the farm-stored loan for transfers completed before the final loan availability date; or

(ii) 110 percent of the loan quantity for the farm-stored loan for transfers completed after the final loan availability date.

(2) Any amounts due the producer shall be disbursed by the county office. The maturity date of the warehouse-stored loan shall be the maturity date applicable to the farm-stored loan which was transferred.

(3) For loans extended in accordance with §§ 1421.200 through 1421.216, CCC shall limit the quantity for a warehouse-stored loan to the quantity approved on the farmer owned reserve agreement loan.

(d) Upon request by the producer before the transfer, the county committee may approve the transfer of a warehouse-stored loan or part thereof to a farm-stored loan at any time during the loan period. Quantities pledged as collateral for a farm-stored loan shall be based on a measurement by a representative of the county office before approving the farm-stored loan. The producer must immediately repay the amount by which the farm-stored loan is less than the warehouse-stored loan and charges plus interest on the shortage. The maturity date of the farm-stored loan shall be the maturity date applicable to the warehouse-stored loan which was transferred.

(e) The quantity of a commodity pledged as security for a farm-stored loan or for which a loan deficiency payment is requested may be determined on the basis of the quantity of the commodity which an eligible producer certifies in writing on Form CCC–666 is eligible to be pledged as collateral and is otherwise available for loan purposes.

(f)(1) If the county committee determines, by measurement or

otherwise, that the actual quantity serving as collateral for a loan based on certification by the producer is less than the loan quantity, the county committee shall call the loan.

(i) The producer shall have 15 days to settle the loan; however, the producer may request reconsideration of the call and provide information regarding the circumstances leading to the incorrect certification. The county committee may approve the producer's request if:

(A) The circumstances are of a highly meritorious nature,

(B) The producer acted in good faith,

(C) The producer did not knowingly provide an incorrect certification and made a reasonable attempt to determine the quantity and,

(D) The producer repays the overdisbursement and charges, plus interest.

(ii) If the loan is called, the county committee may refuse to approve any further farm-stored loans for the producer on any commodity through the end of the next crop year after the crop year in which the incorrect certification was made.

(2) If the county committee determines, by measurement or otherwise, that the actual quantity for a loan deficiency payment based on certification by the producer is less than the quantity eligible for such payment, the county committee may refuse to approve any further loan deficiency payment without evidence of production acceptable to CCC, on any commodity through the end of the next crop year after the crop year in which the incorrect certification was made. However, the producer may request reconsideration of the refusal and provide information regarding the circumstances leading to the incorrect certification. In such cases, the county committee may approve the producer's request if:

(i) The circumstances are of a highly meritorious nature,

(ii) The producer acted in good faith,

(iii) The producer did not knowingly provide an incorrect certification and made a reasonable attempt to determine the quantity and,

(iv) The producer repays the overdisbursement and charges, plus interest for the shortage.

(3) If the producer has incorrectly certified quantities for a loan or a loan deficiency payment on more than one occasion, the county committee shall call the loan or loans involved and approve no further loan deficiency payment without acceptable production evidence for farm-stored loans for the producer on any commodity through the end of the next crop year after the crop year in which the incorrect certification was made. If the county committee feels the seriousness of the matter so justifies, they may deny loan deficiency payments without acceptable production evidence or farm-stored loans to the producer for more than one year. They may also refer the case to the State committee which may request OIG to make an investigation.

(4) If the loan is called in accordance with this subsection, the producer may not repay the loan at the lower loan repayment rate in accordance with § 1421.25.

(g) Producers obtaining a loan for a crop of a commodity shall agree not to move or dispose of the commodity pledged as collateral for such loan without obtaining prior written approval for such action from the county committee in accordance with § 1421.20.

(1) Unauthorized removal is the movement of any loan collateral from the storage structure in which the commodity was stored when the loan was approved to any other storage structure whether or not such structure is located on the producer's farm without prior written consent from the county committee is accordance with § 1421.20. In such cases:

(i) On the first offense:

(A) If there are any liens or encumbrances on the commodity, waivers that fully protect the interest of CCC must be obtained even though the liens or encumbrances are satisfied from the loan proceeds and no additional liens or encumbrances shall be placed on the commodity. If such waivers cannot be obtained, CCC shall call the loan in accordance with paragraph (f)(1) of this section, and

(B) The county committee may refuse to approve any loan deficiency payment without acceptable production evidence and any farm-stored loans for any commodity produced by the producer through the end of the next crop year after the crop year in which the unauthorized removal occurred.

(ii) On the second and subsquent offense, the county committee shall:

(A) Call the loan, and

(B) Not approve any loan deficiency payment without acceptable production evidence and any farm-stored loans for any commodity produced by the producer through the end of the next crop year after the crop year in which the unauthorized removal occurred.

(2) Unauthorized disposition is the conversion of collateral pledged as collateral for a loan without prior written consent from the county committee in accordance with § 1421.20. In such cases, the regulations concerning penalties in paragraph (3) of this section shall be applicable.

(3) If unauthorized disposition of a quantity of a commodity occurs, liquidated damages shall be assessed, in addition to any other amount and applicable interest with respect to the loan, on the quantity so disposed of beginning on the date the county committee has determined the unauthorized disposition occurred and shall continue until the loan is repaid. In such cases:

(i) If the date of the unauthorized disposition of the loan collateral cannot be determined, such disposition shall be considered to have occurred on the later of:

(A) The day following the latest inspection of the collateral by a representative of the county committee, or

(B) The day following disbursement of the loan.

(ii) In agreeing to the note and security agreement, the producer agrees that the conversion of the collateral pledged as collateral for a loan without prior written consent from the county committee in accordance with § 1421.20 will cause serious and substantial damages to CCC, including damages to CCC's price support programs and the incurring of substantial administrative and other costs. The producer and CCC agree that it will be difficult if not impossible, to prove the amount of such damages. Accordingly, in such case, the producer shall pay to CCC liquidated damages computed by multiplying the loan principal which represents the quantity so disposed at the rate of 6.5 percent per annum for the period specified in this subparagraph (3).

(iii) The county committee may refuse to approve any loan deficiency payment without acceptable production evidence and any farm-stored loans for any commodity produced by the producer through the end of the next crop year after the crop year in which the unauthorized disposition occurred.

(4) If liquidated damages are assessed in accordance with paragraph (g)(3) of this section, the county committee:

(i) On the first offense:

(A) May waive some or all such liquidated damages if the county committee determines that:

(*1*) The violation occurred inadvertently or because the producer acted to prevent spoilage of the commodity,

(*2*) The violation did not result in harm or damage to the right or interest of any person or government agency, and

(3) The producer repays the loan and charges plus interest with respect to the quantity of the collateral which has been disposed.

(B) In such cases, shall furnish a copy of its determination to the Administrator, ASCS, and the State committee. If the determination of the county committee is not disapproved by either the Administrator, ASCS, or his designee, or the State committee within sixty days from the date the determinations are received, such determination shall be considered to have been approved.

(ii) On the second and subsequent offense,

(A) Shall not waive liquidated damages, and

(B) Shall not approve any loan deficiency payment without acceptable production evidence and any farm-stored loans for any commodity produced by the producer through the end of the next crop year after the crop year in which the unauthorized disposition occurred.

(iii) Shall not consider the following acts as inadvertent acts, unless prior written approval is obtained from CCC, for the purposes of determining if some or all of the liquidated damages or require repayments and charges plus interest or other administrative actions may be waived:

(A) Movement of loan collateral off the farm,

(B) Movement of loan collateral from one storage structure to another on the farm, and

(C) Feeding of loan collateral.

(h) If the loan is called in accordance with this subsection, the producer may not repay the loan at the lower loan repayment rate in accordance with § 1421.25.

(i) Producers who have been refused a farm-stored loan may apply for a warehouse-stored loan.

§ 1421.18 Warehouse-stored loans.

(a) The quantity of a commodity which may be pledged as collateral for a loan shall be the quantity of any eligible commodity delivered to, or acquired by, CCC at an approved warehouse. Such quantity shall be the net weight specified on the warehouse receipt or supplemental certificate.

(b)(1) In order to be eligible to be pledged as collateral for a loan, the commodity must not be "Sample Grade" and must meet the requirements of § 1421.5 and this section.

(2) Barley must grade No. 5 or better except that:

(i) The barley must not grade "Infested" or have moisture in excess of 14.5 percent unless a supplemental certificate is provided in accordance with § 1421.9; and

(ii) The barley may not have any of the following special grade designations:

(A) Blighted.

(B) Ergoty.

(C) Smutty.

(3)(i) Corn must grade No. 3 or better; and

(ii) The corn must not grade "Infested" or have moisture in excess of 15.5 percent unless a supplemental certificate is provided in accordance with § 1421.9.

(4)(i) Oats must grade No. 3 or better;

(ii) The oats must not grade "Smutty"; "Ergoty"; Bleached"; "Thin"; "Tough"; or otherwise be of distinctly low quality; and

(iii) The oats must not grade "Infested" or have moisture in excess of 14.0 percent unless a supplemental certificate is provided in accordance with § 1421.9.

(5) Rice must grade No. 5 or better and must not have moisture in excess of 14.0 percent. Rice of special grades shall not be eligible.

(6)(i) Rye must grade No. 2 or better except that the rye may grade No. 3 because of "Thin" rye, or grade No. 3 or No. 4 on the factors of test weight or damaged kernels (total) or both;

(ii) The rye must not grade "Smutty"; "Light Smutty"; "Garlicky"; "Light Garlicky"; "Ergoty"; and

(iii) The rye must not grade "Infested" or have moisture in excess of 14.0 percent unless a supplemental certificate is provided in accordance with § 1421.9.

(7)(i) Grain sorghum must grade No. 4 and

(ii) The grain sorghum must not grade "Infested" or have moisture in excess of 14.0 percent unless a supplemental certificate is provided in accordance with § 1421.9.

(8)(i) Soybeans must grade No. 4 or better;

(ii) The soybeans must be adjusted for foreign material exceeding 1 percent;

(iii) The soybeans may not grade "Garlicky"; and

(iv) The soybeans may not grade "Infested" or have moisture in excess of 14.0 percent unless a supplemental certificate is provided in accordance with § 1421.9.

(9)(i) Wheat must grade No. 5 or better;

(ii) If the wheat is of the class "Mixed Wheat", the wheat must consist of mixtures of grades of eligible wheat as provided in paragraph (b)(9)(i) of this section, if such mixtures are the result of natural conditions;

(iii) The wheat must not grade "Ergoty", or "Treated"; and

(iv) The wheat must not grade "Infested," have 32 or more insect damaged kernels per 100 grams, or have moisture in excess of 13.5 percent unless a supplemental certificate is provided in accordance with § 1421.9.

(v) The wheat must not be "unclassed."

(10)(i) Canola must contain not less than 35 percent oil content;

(ii) The canola must not grade "Infested" or have moisture in excess of 10.0 percent unless a supplemental certificate is provided in accordance with § 1421.9;

(iii) The canola must not grade "Musty"; "Sour"; "Heating"; "COFO"; "Distinctly Low Quality";

(iv) The canola must not exceed the following percentages:

(A) For heat damage, 0.5 percent;

(B) For distinctly green seeds, 6.0 percent;

(C) For total damage, 10.0 percent;

(D) For admixtures:

(1) For stones, 0.05 percent;

(2) For ergot, 0.05 percent;

(3) For sclerotinia bodies, 0.2 percent;

(4) For total conspicuous admixtures, 1.5 percent;

(5) For inconspicuous admixtures, 5.0 percent;

(E) For erucic acid, 2.0 percent;

(v) The canola must not contain more than the following count of other material per 1,000 grams:

(A) For animal filth, 3;

(B) For glass, 0;

(C) For unknown foreign substance, 1;

(vi) The glucosinolate content in canola must not exceed 30 micro moles per gram;

(vii) The canola must not contain in excess of 30.0 garlic bulbs per 1,000 grams; and

(viii) The canola gross weight must be adjusted downward to reflect dockage and for the presence of any admixtures.

(11)(i) Flaxseed must grade U.S. No. 2 or better except that:

(ii) The flaxseed must not grade "Infested" or have moisture in excess of 9.0 percent unless a supplemental certificate is provided in accordance with § 1421.9; and

(iii) The flaxseed gross weight must be adjusted downward to reflect dockage.

(12)(i) Mustard seed must not grade "Infested" or have moisture in excess of 10.0 percent unless a supplemental certificate is provided in accordance with § 1421.9;

(ii) The mustard seed must not grade "Musty"; "Sour"; "Heating"; "COFO"; "Distinctly Low Quality";

(iii) The mustard seed class must not contain more than 0.5 percent of other mustard seed class;

(iv) The mustard seed must not exceed the following percentages:
(A) For heat damage, 0.2 percent;
(B) For distinctly greed seeds, 1.5 percent;
(C) For total damage, 3.0 percent;
(D) For other weed seed, 0.5 percent;
(E) For sclerotinia bodies, 0.2 percent;
(F) For stones, 0.05 percent;
(G) For ergot, 0.05 percent;
(H) For inconspicuous admixtures including cockle, yellow wild mustard, and rapeseed, 0.2 percent;
(v) The mustard seed must not contain more than the following count of other material per 1,000 grams:
(A) For animal filth, 3;
(B) For glass, 0;
(C) For unknown foreign substance, 1; and
(vi) The mustard seed gross weight must be adjusted downward to reflect dockage.
(13)(i) Rapeseed must contain not less than 35 percent oil content;
(ii) The rapeseed must not grade "Infested" or have moisture in excess of 10.0 percent unless a supplemental certificate is provided in accordance with § 1421.9;
(iii) The rapeseed must not grade "Musty"; "Sour"; "Heating"; "COFO"; "Distinctly Low Quality";
(iv) The rapeseed must not exceed the following percentages:
(A) For heat damage, 0.5 percent;
(B) For distinctly green seeds, 6.0 percent;
(C) For total damage, 10.0 percent;
(D) For admixtures;
(*1*) For stones, 0.05 percent;
(*2*) For ergot, 0.05 percent;
(*3*) For sclerotinia bodies, 0.2 percent;
(*4*) For total conspicuous admixtures, 1.5 percent;
(*5*) For conspicuous admixtures, 5.0 percent;
(v) The rapeseed must not contain more than the following count of other material per 1,000 grams:
(A) For animal filth, 3;
(B) For glass, 0;
(C) For unknown foreign substance, 1;
(vi) The rapeseed must not contain less than 45 percent erucic acid; and
(vii) The rapeseed gross weight must be adjusted downward to reflect dockage and for the presence of any admixtures.
(14)(i) Safflower seed must contain not less than 35 percent oil content;
(ii) The Safflower seed must not grade "Infested" or have moisture in excess of 10.0 percent unless a supplemental certificate is provided in accordance with § 1421.9;
(iii) The Safflower seed must not grade "Musty"; "Sour"; "Heating"; "COFO"; "Distinctly Low Quality";
(iv) The safflower seed must not exced the following percentages:
(A) For heat damage, 0.1 percent;
(B) For total damage, 3.0 percent;
(C) For other grain, 3.0 percent;
(D) For free fatty acid, 4.0 percent;
(E) For dockage, 6.0 percent;
(v) The safflower seed must not contain more than the following count of other material per 1,000 grams:
(A) For animal filth, 3;
(B) For glass, 0;
(C) For unknown foreign substance, 1;
(vi) The safflower seed must not contain less than 80 or more than 155 WIJS iodine value; and
(vii) The safflower seed gross weight must be adjusted downward to reflect dockage.
(15)(i) For sunflower seed used to extract oil, the sunflower seed must grade U.S. No. 2 or better except that:
(A) The sunflower seed must contain not less than 35 percent oil content;
(B) The sunflower seed must not grade "Infested" or have moisture in excess of 10.0 percent unless a supplemental certificate is provided in accordance with § 1421.9; and
(C) The sunflower seed gross weight must be adjusted downward to reflect the presence of any foreign material.
(ii) For sunflower seed used for a purpose other than to extract oil:
(A) Sunflower seed must be sized using a 20/64 sieve;
(B) The sunflower seed must not grade "Infested" or have moisture in excess of 10.0 percent unless a supplemental certificate is provided in accordance with § 1421.9;
(C) The sunflower seed must not contain less than 30 pounds per bushel;
(D) The sunflower seed must not exceed the following percentages;
(*1*) Heat damage, 1.0 percent;
(*2*) Black seeds, 2.0 percent;
(*3*) Insect damage, 5.0 percent;
(*4*) Combination of frost damage, badly-weathered damage, disease damage, otherwise materially damage, and immature, 1.0 percent;
(E) The sunflower seed must not contain more than a count of 5 sclerotinia bodies per pound;
(F) The sunflower seed must not grade "Musty"; "Sour"; "COFO"; "Sprout"; "Moldy"; and
(G) The sunflower seed gross weight must be adjusted downward to reflect undersized seed, dockage, and for the presence of any admixtures and foreign material.

§ 1421.19 Liquidation of loans.

(a) If a producer does not pay to CCC the total amount due in accordance with a loan, CCC shall have the right to acquire title to the loan collateral and to sell or otherwise take possession of such collateral without any further action by the producer. With respect to farm-stored loans, the producer may, as CCC determines, deliver the collateral for such loan, or other eligible commodities of the same class and kind, in accordance with instructions issued by CCC. CCC will not accept delivery of any quantity of a commodity in excess of the larger of:
(1) 110 percent of the loan quantity; or
(2) A sufficient quantity having a settlement value equal to the loan amount and charges plus interest.
(b) If the producer desires to deliver eligible commodities to CCC in satisfaction of the loan, the producer must notify CCC of such intention before the loan maturity date by giving written notice to the county office which disbursed the proceeds for such loan. If the producer fails to deliver such commodities to CCC by the date specified on Farm CCC–691, Commodity Delivery Notice, and the producer subsequently redeems the commodity pledged as collateral for the loan before delivery is completed, interest shall continue to be assessed on such amount in accordance with part 1405 of this title.
(c) If, either before or after maturity, the commodity is going out of condition or is in danger of going out of condition, the producer shall so notify the county office and confirm such notice in writing. If the county committee determines that the commodity is going out of condition or is in danger of going out of condition and the commodity cannot be satisfactorily conditioned by the producer and delivery cannot be accepted within a reasonable length of time, the county committee shall arrange for an inspection and grade and quality determination. When delivery is completed, settlement shall be made on the basis of such grade and quality determination or on the basis of the grade and quality determination made at the time of delivery, whichever is higher, for the quantity actually delivered.
(d) If the producer loses control of the storage structure, or if there is insect infestation that cannot be controlled, danger of flood, or damage to the storage structure making it unsafe to continue storage of the commodity on the farm, the comodity may be delivered before the maturity date of the loan upon prior approval of the county committee in accordance with paragraph (a) of this section. Settlement will be made with the producer as provided in § 1421.22.

§ 1421.20 Release of the commodity pledged as collateral for a loan.

(a) A producer shall not move or dispose of any commodity which is pledged as collateral for a loan until prior written approval for such removal or disposition has been provided by the county committeee in accordance with this section. A producer may at any time obtain the release of all or any part of the commodity remaining as loan collateral by paying to CCC, with respect to the quantity of the commodity released:

(1) The principal amount of the loan which is outstanding and charges plus interest, or

(2) If CCC so announces, an amount less than the principal amount of the loan and charges plus interest under the terms and conditions specified by CCC at the time the producer redeems the commodity pledged as collateral for such loan in accordance with § 1421.25. The producer may request and CCC may approve removal of a quantity of the commodity from storage, without the payment of CCC of the loan amount, if the principal amount outstanding on such loan does not exceed the maximum loan value of the quantity of the commodity remaining in storage after removal of the quantity requested by the producer before removal. When the proceeds of the sale of the commodity are needed to repay all or a part of a farm-stored loan, the producer must request and obtain prior written approval of the county office on a form prescribed by CCC in order to remove a specified quantity of the commodity from storage. Any such approval shall be subject to the terms and conditions set forth in the applicable form, copies of which may be obtained by producers at the county office. Any such approval shall not constitute a release of CCC's security interest in the commodity or release the producer from liability for any amounts due and owing to CCC with respect to the loan indebtedness if full payment of such amounts is not received by the county office. If a producer fails to repay a loan within the time period prescribed by CCC for a farm-storage loan and commodity pledged as loan collateral has been delivered to a buyer in accordance with Form CCC–681–1, Marketing Authorization, such producer may not repay the loan at the level that is less than the loan level determined in accordance with § 1421.25 (a)(1)(i) or (b)(1).

(b) The note and security agreement shall not be released until the loan has been satisfied in full.

(c)(1) The producer may arrange with the county office for trhe release of all or part of the commodity which is pledged as collateral for a warehouse-stored loan at or prior to the maturity of such loan by, with respect to the quantity of the commodity to be released, paying to CCC:

(i) The principal amount of the loan and charges plus interest, or

(ii) If CCC so announces, an amount less than the principal amount of the loan and charges plus interest under the terms and conditions specified by CCC at the time the producer redeems the commodity pledged as collateral for such loan in accordance with § 1421.25. Each partial release of the loan collateral must cover all of the commodity represented by one warehouse receipt. Subject to the provision of § 1421.4(i), warehouse receipts redeemed by repayment shall be released only to the producer or the producer's authorized agent, except that redeemed warehouse receipts may be released to persons who may be designated in a written authorization which is filed with the county office by the producer or the producer's authorized agent and which is dated within 15 days prior to the date of repayment.

(2) Upon the filing of Form CCC–699, Reconcentration Agreement and Trust Receipt, by the producer and warehouseman, CCC may during the loan period approve the reconcentration in another CCC-approved warehouse of all or part of a commodity which is pledged as collateral for a warehouse-stored loan. Any such approval shall be subject to the terms and conditions set forth in Form CCC–699, Reconcentration Agreement and Trust Receipt.

(3) A producer may, before the new warehouse receipt is delivered to CCC, pay to CCC:

(i) The principal amount of the loan and charges plus interest and applicable charges, or

(ii) If CCC so announces, an amount less than the principal amount of the loan and charges plus interest under the terms and conditions specified by CCC at the time the producer redeems the commodity pledged as collateral for such loan in accordance with § 1421.25.

(d) The note and security agreement shall not be released until the loan has been satisfied in full.

§ 1421.21 Purchase agreements.

(a) An eligible producer may sell to CCC any or all of the producer's eligible commodity which is not pledged as collateral for a price support loan. A producer who has executed a price support purchase agreement may execute a price support loan with respect to the same quantity of such commodities prior to the final loan availability date. In such event, the loan shall have a maturity date which is the last day of the ninth calendar month following the month in which the loan application is approved. CCC will not accept delivery of any quanity in excess of 110 percent of the quantity stated in the purchase agreement. Settlement of the quantity not in excess of 110 percent of the quantity stated in the purchase agreement shall be made in accordance with § 1421.22.

(b)(1) In the case of an eligible commodity not in an approved warehouse, the producer must make delivery of the commodity the producer desires to sell to CCC within the period of time after the expiration date of the purchase agreement as specified in delivery instructions issued by the county office.

(2) In the case of eligible commodities stored in an approved warehouse, the producer must submit to the county office, not earlier than 15 days before the expiration date of the purchase agreement nor later than the day after such date, warehouse receipts for the quantity of the commodity the producer elects to sell to CCC. Notwithstanding any of the provisions of this section, in the case of an eligible farm-stored commodity covered by an approved purchase agreement the county committee may, on request of the producer, authorize early delivery of the commodity if the producer loses control of the storage structure or if there is insect infestation that cannot be controlled, danger of flood or damage to the storage structure, making it unsafe to continue storage of the commodity on the farm.

§ 1421.22 Settlement.

(a) The settlement of loans and purchase agreements shall be made by CCC on the basis of the quality and quantity of the commodity delivered to CCC by the producer.

(b) Settlements made by CCC with respect to eligible commodities which are acquired by CCC and which are stored in an approved warehouse shall be made on the basis of the entries set forth in the applicable warehouse receipt, supplemental certificate, and other accompanying documents.

(c)(1) All eligible commodities which are stored in other than approved warehouses shall be delivered to CCC in accordance with instructions issued by CCC. Settlement for such commodities shall be made on the basis of entries set forth in the applicable warehouse receipt, supplemental certificate, and other accompanying documents.

(2) With respect to all commodities except peanuts, which are delivered from other than an approved warehouse, settlement shall be made by CCC on the basis of the basic support rate which is in effect for the commodity at the producer's customary delivery point, as determined by CCC.

(3)(i) With respect to peanuts, settlement values for quota and additional peanuts shall be determined and announced annually by CCC. Settlement shall be made by CCC on the amount computed on the basis of net weight and quality of such peanuts with an allowance of 4 percent for Virginia type peanuts and an allowance of 3.5 percent for other types of peanuts in order to compensate producers for shrinkage during storage on peanuts delivered on or after January 31 of the year following the year in which the crop was produced less discounts of:

(A) $2 per ton, net weight, for each full 1 percent of foreign material in excess of 10 percent; and

(B) $10 per ton, net weight, for peanuts containing more than 10 percent moisture.

(ii) No allowance for shrinkage shall be made for storage with respect to peanuts delivered before February 1 of the year following the year in which the crop was produced.

(iii) If a producer delivers peanuts from a farm to CCC in a quantity that would exceed the farm poundage quota when added to the peanuts marketed, and considered marketed from the farm as quota peanuts, the additional peanut support rate shall be used with respect to such peanuts if CCC determines that the producer made an inadvertent error in determining the quantity of peanuts pledged as collateral as quota peanuts. If CCC determines that such error was not inadvertent, price support shall not be made available with respect to such quantity and marketing quota penalties shall be assessed in accordance with part 729 of this title.

(iv) The support rate for additional peanuts shall be used for all peanuts which do not grade "Segregation 1" at the time of delivery to CCC if the producer does not elect to settle such additional peanuts as quota peanuts. If the producer elects to settle such peanuts as quota peanuts, the quantity shall not exceed the lesser of:

(A) The difference between the production of Segregation 1 peanuts on the farm and the farm poundage quota; or

(B) The amount of the undermarketings of quota peanuts as shown on the farm marketing card.

(4) With respect to rice acquired by CCC at a location other than an approved warehouse, settlement shall be made on the basis of the class, grade, and quality entries set forth in the Federal-State inspection certificate and on the basis of the quantity set forth in the weight certificates. If rice is pledged as collateral for a farm-stored loan in an area where a location differential is in effect and such rice is delivered to CCC in an area where a differential is not applicable, settlement shall be made by CCC on the basis of the basic support rate which is in effect for the area in which delivery is made.

§ 1421.23 Foreclosure.

(a) Upon maturity and nonpayment of a warehouse-stored loan, title to the unredeemed collateral securing the loan shall immediately vest in CCC. Upon maturity and nonpayment of farm-stored loan, title to the unredeemed collateral securing the loan shall vest in CCC upon demand. When CCC acquires title to the unredeemed collateral, CCC shall have no obligation to pay for any market value which such collateral may have in excess of the loan indebtedness, (the unpaid amount of the note and charges plus interest).

(b) If the total amount due on a farm-stored loan (the unpaid amount of the note and charges, plus interest) is not satisfied upon maturity, CCC may remove the commodity from storage, and assign, transfer, and deliver the commodity or documents evidencing title thereto at such time, in such manner, and upon such terms as CCC may determine, at public or private sale. Any such disposition may also be effected without removing the commodity from storage. The commodity may be processed before sale and CCC may become the purchaser of the whole or any part of the commodity at either a public or private sale.

(c) If a farm-stored commodity removed by CCC from storage is sold at less than the amount due on the loan (excluding charges and interest) the producer shall pay to CCC the difference between the amount due on the loan and the higher of the sales proceeds or the settlement value of the commodity removed by CCC and charges plus interest on such difference. The amount of the deficiency may be set off against any payment which would otherwise be due the producer from CCC or any other agency of the United States.

§ 1421.24 Protein determinations.

(a) With respect to Hard Red Winter and Hard Red Spring wheat tendered to CCC which is stored in an approved warehouse, producers must obtain "Official" protein content determinations or, if determined acceptable by CCC, protein content determinations arrived at by mutual agreement between the producer and the warehouseman. Costs of such determinations shall not be paid by CCC.

(b) With respect to farm-stored wheat, the basic support rate shall not be adjusted to reflect the protein content.

§ 1421.25 Market price repayments.

(a) Rice market repayments.

(1) A producer may repay a loan for a crop of rice at a level that is the lesser of:

(i) The loan level and charges, plus interest determined for a crop; or

(ii) The higher of:

(A) The loan level determined for such crop multiplied by 70 percent for the 1991 and subsequent years crop; or

(B) The prevailing world market price, as determined by CCC.

(2) The prevailing world market price for a class of rice shall be determined by the CCC based upon a review of prices at which rice is being sold in world markets and a weighting of such prices through the use of information such as changes in supply and demand of rice, tender offers, credit concessions, barter sales, government-to-government sales, special processing costs for coatings or premixes, and other relevant price indicators, and shall be expressed in U.S. equivalent values f.o.b. vessel, U.S. port of export, per hundredweight as follows:

(i) U.S. grade No. 2, 4 percent broken kernels, long grain milled rice;

(ii) U.S. grade No. 2, 4 percent broken kernels, medium grain milled rice; and

(iii) U.S. grade No. 2, 4 percent broken kernels, short grain milled rice.

(3) Export transactions involving rice and all other related market information will be monitored on a continuous basis for the purposes of paragraph (2) of this section. Relevant information may be obtained for this purpose from U.S. Department of Agriculture field reports, international organizations, public or private research entities, international rice brokers, and any other source of reliable information.

(4) The prevailing world market price for a class of rice adjusted to U.S. quality and location (the "adjusted world price" (AWP)), which is determined in accordance with paragraph (5) of this section, shall be applicable to the provisions in this section.

(5) The AWP for each class of rice shall equal the prevailing world market price for a class of rice (U.S. equivalent

value) as determined in accordance with paragraphs (a) (2) and (3) of this section and adjusted to U.S. quality and location as follows:

(i) The prevailing world market price for a class of rice shall be adjusted to reflect an f.o.b. mill position by deducting from such calculated price an amount which is equal to the estimated national average costs associated with:

(A) The use of bags for the export of U.S. rice, and

(B) The transfer of such rice from a mill location to f.o.b. vessel at the U.S. port of export with such costs including, but not limited to, freight, unloading, wharfage, insurance, inspection, fumigation, stevedoring, interest, banking changes, storage, and administrative costs.

(ii) The price determined in accordance with paragraph (a)(5)(i) of this section shall be adjusted to reflect the market value of the total quantity of whole kernels contained in such milled rice by deducting the value of broken kernels contained therein, with such value of the broken kernels to be determined by multiplying the quantity of such broken kernels (4% per hundredweight) by the market value of such broken kernels. The market value of broken kernels shall be based upon the estimated domestic market values of all sizes of broken kernels.

(iii) The price determined in accordance with (a)(5)(ii) of this section shall be adjusted to reflect the per pound market value of whole kernels by dividing the price by the quantity of whole milled kernels contained in the milled rice (96% per hundredweight).

(iv) The price determined in accordance with paragraph (a)(5)(iii) of this section shall be adjusted to reflect the market value of whole kernels contained in 100 pounds of rough rice by multiplying such price by the estimated national average quantity of whole kernel rice by class obtained from milling 100 pounds of rough rice.

(v) The price determined in accordance with paragraph (a)(5)(iv) of this section shall be adjusted to reflect the total market value of rough rice by:

(A) Adding to such price:

(*1*) The market value of bran contained in the rough rice, computed by multiplying the domestic unit market value of bran by the estimated national average quantity of bran produced in milling 100 pounds of rice; and

(*2*) The market value of broken kernels contained in the rough rice, computed by multiplying the estimated domestic market values of all sizes of broken kernels by the estimated national average quantity of broken kernels produced in milling 100 pounds of rice;

(B) Deducting from such price an estimated cost of milling rough rice; and

(C) Deducting from such price an estimated cost of transporting rough rice from farm to mill locations.

(vi) The price determined in accordance with paragraph (a)(5)(v) of this section shall be adjusted to a whole kernel loan rate basis by deducting the estimated domestic market value of the total quantity of broken kernels contained in such rice and dividing the resulting value by the estimated national average quantity of milled whole kernels produced in milling 100 pounds of rice.

(6) The AWP for each class for rice, loan rate basis, shall be determined by CCC and shall be announced, to the extent practicable, on or after 3 p.m. Eastern time each Tuesday continuing through the last Tuesday of July 1996, but may be announced more or less frequently, as determined by CCC. In the event that Tuesday is a non-workday, the determination will be announced the next workday, on or after 3 p.m. Eastern time. The announced prices will be effective upon announcement and will remain effective until the next world price is announced.

(7) As a condition of permitting a producer to repay such a loan, CCC may require the producer to purchase CCC commodity certificates equal in value to an amount that does not exceed one-half the difference between the loan level and charges, plus interest, and the loan repayment amount.

(b) For 1991 through 1995 crops of oilseeds, a producer may repay a loan at a level that is the lesser of:

(1) The loan level and charges, plus interest determined for such crop; or

(2) Such other level determined by CCC, not to be in excess of the loan level for such crop that will minimize potential loan forfeitures, accumulation of oilseed stocks by CCC, and the cost incurred by CCC in storing oilseeds, and to allow oilseeds produced in the United States to be marketed freely and competitively.

(c)(1) CCC may, in lieu of the repayment level determined in accordance with paragraph (b)(2) of this subsection, allow producers to repay a loan at the adjusted world price of the oilseed.

(2) The adjusted world price (AWP) for soybeans will be determined as follows:

(i) The prevailing world price for soybeans will be established at least weekly based upon the prior week's Thursday f.o.b. quotes in U.S. dollars for soybeans in the major export markets, as determined by CCC, weighted against the total volume of soybeans shipped from these markets using the prior 4-week average of weekly shipments.

(ii) If no price quotations are available for the prior Thursday, the prevailing world price will be based upon the most recent price information available.

(iii) The AWP will be the prevailing world price adjusted to U.S. location, reflecting freight, other costs, and quality as appropriate.

(iv) The AWP for soybeans will be determined and announced by CCC at least weekly.

(3) The adjusted world price (AWP) for flaxseed will be determined as follows:

(i) The prevailing world price for flaxseed will be established at least monthly based on a monthly average of the major f.o.b. export market prices, as determined by CCC. If price quotations are not available for one or more days in the 30 day period ending the Friday prior to the announcement, the available quotations during the period will be used. If no price quotations are available during the 30-day period, the prevailing world price will be based upon the previous 30-day period available.

(ii) The AWP will be the prevailing world price adjusted to U.S. location and exchange rate, reflecting freight costs, other costs, and quality as appropriate.

(iii) The adjusted world price for flaxseed will be determined and announced by CCC at least monthly.

(4) The adjusted world price (AWP) for sunflower seed will be determined as follows:

(i) The prevailing world price for sunflower seed will be established at least monthly based on a monthly average of the major f.o.b. export market prices, as determined by CCC, for the month prior to the announcement. If no price quotations are available during the period, the prevailing world price will be based upon the previous monthly average available.

(ii) The AWP will be the prevailing world price adjusted to U.S. location, reflecting freight costs, other costs, and quality, as appropriate.

(iii) The AWP for sunflower seed will be determined and announced by CCC at least monthly.

(5) The adjusted world price (AWP) for canola will be determined as follows:

(i) The prevailing world price for canola will be established at least monthly based on a monthly average of the major f.o.b. export market prices, as determined by CCC. If price quotations are available for one or more days in the

30-day period ending the Friday prior to announcement, the available quotations during the period will be used. If no price quotations are available during the 30-day period, the prevailing world price will be based upon the previous 30-day period available.

(ii) The AWP will be the prevailing world price adjusted to U.S. location and exchange rate, reflecting freight, other costs, and quality, as appropriate.

(iii) The AWP for canola will be determined and announced by CCC at least monthly.

(6) The adjusted world price (AWP) for rapeseed will be determined as follows:

(i) The prevailaing world price for rapeseed will be established at least monthly based upon a representative average of available U.S. prices, as determined by CCC, weighted by acreage. The prevailing world price will be based on the most recent price information available.

(ii) The AWP will be the prevailing world price adjusted to U.S. location reflecting freight, other costs and quality as appropriate.

(iii) The AWP for rapeseed will be determined and announced by CCC at least monthly.

(7) The adjusted world price for mustard seed will be determined as follows:

(i) The prevailing world price for mustard seed will be established at least monthly based upon a monthly average of available market prices, as determined by CCC, such as contract prices and spot market prices. If no price quotations are available for one or more days in the 30-day period ending the Friday prior to the announcement, the available quotations during the period will be used. If no price quotations are available during the 30-day period, the prevailing world price will be based upon the previous 30-day period available.

(ii) The AWP will be the prevailing world price adjusted to U.S. location, reflecting freight, other costs, and quality, as appropriate.

(iii) The AWP for mustard seed will be determined and announced by CCC at least monthly.

(8) The adjusted world price for safflower seed will be determined as follows:

(i) The prevailing world price for safflower seed will be established at least monthly based upon a representati e average of available U.S. contract prices, as determined by CCC, weighted by acreage. The prevailing world price will be based upon the most recent price information available.

(ii) The AWP will be the prevailing world price adjusted to U.S. location reflecting freight, other costs, and quality, as appropriate.

(iii) The AWP for safflower seed will be determined and announced by CCC as least monthly.

(d) CCC may allow producers with rice or oilseed loans to request to lock in a loan repayment rate which has been announced by CCC in accordance with paragraphs (a) and (b) of this section, for not more than 30 days from the date of such request. In such cases:

(1) The producer shall file, on a form prescribed by CCC, an agreement to redeem all or a portion of the loan quantity for a loan at the announced price entered on the form,

(2) If such request is approved by CCC, the rate specified on such form shall be in effect for such producer for not more than 30 days from the date such request is made for such loan, and

(3) If the producer fails to redeem the specified loan quantity within the 30-day period, CCC will require the producer to redeem the loan quantity at not less than the loan level determined for such crop in accordance with paragraphs (a)(1)(i) or (b)(1) of this section, as applicable for the crop.

(e) To the extent practicable, CCC shall determine and announce the repayment levels for each crop of a commodity as follows:

(1) On a weekly basis for rice and oilseeds, except soybeans, and

(2) On a daily basis for soybeans.

(f) The difference between the loan level, excluding charges and interest, and the loan repayment level is the market gain. The total amount of any market gain realized by a producer is limited in accordance with the regulations at part 1497 of this title.

§ 1421.26 Transfer of farm-stored loan to warehouse-stored association loan.

Producers may deliver peanuts under a farm-stored loan to the association and obtain loan advances on such peanuts with the prior approval of the county office anytime on or before January 31 following the calendar year in which the crop was grown. Association advances shall be payable jointly to the producer and the CCC and shall be used to settle the farm-stored loan.

§ 1421.27 Producer-handler purchases of additional peanuts pledged as collateral for a loan.

(a) Producer-handlers may, at any time before loan maturity, forfeit their additional peanuts to CCC and immediately repurchase such peanuts from CCC by paying the amount necessary under the following sales policies:

(1) For unrestricted use, at a price determined by CCC but, for the applicable type, not less than 105 percent of the quota loan rate, if purchased before December 31 of the calendar year in which the crop was grown, and at not less than 107 percent of the quota loan rate, if purchased after December 31 of the calendar year in which the crop was grown.

(2) For edible export, at a price determined by CCC but not less than any minimum sales price determined and announced by CCC.

(3) For crushing (either domestic or export), at a price determined by CCC but not less than the additional support level for the applicable type.

(b) For purchases on or before January 31 following the calendar year in which the crop was grown, the county committee shall determine the sale price under the appropriate sales policy specified in paragraph (a) of this section. Loans will be settled at the county office, and amounts collected in excess of that necessary to settle loans will be remitted to the association for the respective area. The association will credit such amounts to the appropriate price support loan pool. The producer should be listed as a participant in the loan pool for the purpose of determining and distributing net gains from the loan pool.

(c) For purchases after January 31 following the calendar year in which the crop was grown, the county committee shall determine the sale price under the appropriate sales policy specified in paragraph (a) of this section. Any amount collected in excess of the loan indebtedness shall accrue to CCC.

§ 1421.28 Required producer-handler records and supervision of farm-stored additional peanuts pledged as collateral for a loan or purchased by a producer-handler from loan.

(a)(1) Each producer-handler shall maintain records as required in 7 CFR part 1446 for all additional peanuts which are purchased and sold for which an ASCS–1007, Inspection Certificate and Sales Memorandum, is issued.

(2) The following records shall be maintained for all peanuts purchased from CCC which are not inspected. Each producer-handler shall maintain records which show all sales and other disposals of peanuts. Such records shall show date of sale, quantity, type, and to whom sold. Records shall be maintained in such a manner which will enable the county office to readily reconcile quantities sold with all peanuts

produced by the producer. All records shall be maintained for a period of three years following the end of the marketing year in which the peanuts were produced.

(b)(1) The county office shall inspect and account for all additional peanuts pledged as collateral for a loan as determined necessary by the county committee.

(2) The county office shall supervise the disposition of all additional peanuts purchased for use as seed and not inspected. The identical peanuts pledged as collateral for a loan must be disposed of and the producer must account for all peanuts which were under additional loan. The producer-handler shall request a county office representative to supervise the disposition of the peanuts and shall give the county office at least 3 working days notice of the date of such disposition. The county office shall determine the extent to which supervision is needed.

(3) With respect to additional peanuts on which ASCS–1007 is issued, the producer-handler shall be subject to all provisions in part 1446 relating to the disposition of additional peanuts.

(c) The producer-handler shall pay all costs of supervision, as determined by the county committee for county office supervision when county office supervision is completed, and or determined by the association for peanuts supervised by association representatives when association supervision is completed.

(d) The producer-handler is subject to penalties as provided in part 1446 of this title with respect to any peanuts purchased in accordance with § 1421.27.

§ 1421.29 Loan deficiency payments.

(a) CCC will announce whether loan deficiency payments will be made available to producers on a farm for a specific crop for a crop year.

(b) In order to be eligible to receive loan deficiency payments if such payments are made available for a crop, the producer of such commodity must:

(1) Comply with all of the program requirements to be eligible to obtain loans or purchases in accordance with this part;

(2) Agree to forego obtaining such loans or purchases; and

(3) Otherwise comply with all program requirements.

(c) The loan deficiency payment rate for a crop shall be the amount by which the price support loan level for the crop exceeds the level at which CCC has announced that producers may repay their price support loans in accordance with § 1421.25. Such rate shall be the amount determined on the day the producer provides a complete request for a loan deficiency payment to the county office.

(d) The loan deficiency payment applicable to such crop shall be computed by multiplying the loan deficiency payment rate, as determined in accordance with paragraph (c) of this section, by the quantity of the crop the producer is eligible to pledge as collateral for a price support loan for which the loan deficiency payment is requested.

(e) The total amount of loan deficiency payment a producer may receive is limited in accordance with the regulations at part 1497 of this chapter.

(f) CCC will make 90 percent of the loan deficiency payment in accordance with paragraph (d) of this section. Notwithstanding any provisions in this part, a loan deficiency payment may be based on 100 percent of the net quantity specified on acceptable evidence of production of the commodity certified as eligible for loan deficiency payment if such production evidence is provided on or before the final loan availability date for such commodity. If such production evidence is provided after the final loan availability date, CCC shall limit such increase in loan deficiency payment quantity to 110 percent of the quantity certified as eligible for such payment.

§ 1421.30 Death, incompetency, or disappearance.

In case of the death, incompetency, or disappearance of any producer who is entitled to the payment of any sum in settlement of a loan, loan deficiency payment, or a purchase agreement, payment shall, upon proper application to the county office which made the loan, loan deficiency payment, or purchase agreement, be made to the persons who would be entitled to such producer's payment under the regulations contained in part 707 of this title.

§ 1421.31 Recourse loans.

(a) CCC shall make recourse loans available to eligible producers of high moisture barley, high moisture corn, and high moisture grain sorghum. Repayment or settlement of such recourse loans shall be in accordance with the terms and conditions set forth by CCC.

(b) CCC may make recourse loans available to eligible producers with respect to commodities not specified in paragraph (a) of this section. Repayment or settlement of such recourse loans shall be in accordance with the terms and conditions set forth by CCC when the availability of such recourse loans is announced.

§ 1421.32 Handling payments and collections not exceeding $9.99.

In order to avoid administrative costs of making small payments and handling small accounts, amounts of $9.99 or less which are due the producer will be paid only upon the producer's request. Deficiencies of $9.99 or less, including interest, may be disregarded unless demand for payment is made by CCC.

Subpart—Rice Marketing Certificate Program

Authority: 7 U.S.C. 1441–2; 15 U.S.C. 714b and 714c.

§ 1421.320 General provisions.

(a) This subpart sets out the terms and conditions under which the Commodity Credit Corporation (CCC) shall make payments, in the form of commodity certificates, to eligible persons who have entered into a Rice Marketing Certificate Agreement with CCC to participate in the rice marketing certificate program.

(b) If, beginning August 1, 1991, and ending July 31, 1996, CCC determines that the adjusted world price for a class of rice determined in accordance with § 1421.25(a)(1)(ii) of this part is below the current loan repayment rate for that class of rice determined in accordance with § 1421.25 of this part, then CCC, in order to make domestically-produced rice competitive in world markets and to maintain and expand exports of domestically produced rice, shall make payments available to eligible persons in accordance with the provisions of this subpart.

(c) Such payments shall be based upon the quantity of eligible rice which an eligible person has:

(1) Redeemed from a price support loan with cash or;

(2) With respect to eligible rice which has not been and will not be pledged as collateral for a price support loan, sold as evidenced by documentation acceptable to CCC.

§ 1421.321 Eligible persons.

For the purposes of this subpart, the following persons shall be considered to be eligible to enter into a Rice Marketing Certificate Agreement with CCC and to receive payment in accordance with this subpart:

(a) Producers of eligible rice, and

(b) Cooperative Marketing Associations which acquire the eligible rice production of their members and which have been approved in accordance with part 1425 of this title to obtain price support from CCC on behalf of their members.

§ 1421.322 Eligible rice.

For the purposes of this subpart, eligible rice is 1991 and subsequent crop rice (Oryza Sativa L.), unmilled and unprocessed, which consists of 50 percent or more of paddy kernels of rice and which is eligible to be pledged as collateral for price support loan as provided in this title, and with respect to which a payment in accordance with the provisions of this subpart has not been made available.

§ 1421.323 Rice marketing certificate agreement.

(a) Payments in accordance with this subpart shall be made available to eligible persons who have entered into a Rice Marketing Certificate Agreement with CCC and who have complied with the terms and conditions set forth in this subpart and the Rice Marketing Certificate Agreement.

(b) Rice Marketing Certificate Agreements may be obtained from local county Agricultural Stabilization and Conservation Service offices.

§ 1421.324 Payment rate.

The payment rate for the purposes of calculating payments made available in accordance with this subpart shall be based upon the difference between the adjusted world price for the class of rice and the loan repayment level as specified in the rice Marketing Certificate Agreement in accordance with § 1421.25 of this title.

Signed this 25th day of April, 1991 in Washington, DC.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91-10314 Filed 5-1-91; 8:45 am]

BILLING CODE 3410-05-M

Animal and Plant Health Inspection Service

9 CFR Part 114

[Docket No. 91-007]

Production Requirements for Biological Products; Outline Guide for Diagnostic Test Kits

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations by adding an outline guide which contains the requirements for the preparation of Outlines of Production for diagnostic test kits. The current Standard Requirements contain such guides for other biological products but not for diagnostic test kits. The purpose of this action is to codify uniform requirements for the preparation of Outlines of Production for diagnostic test kits which could be used by all producers of veterinary biologics.

EFFECTIVE DATE: June 3, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. Albert P. Morgan, Senior Staff Veterinarian, Veterinary Biologics, BBEP, APHIS, USDA, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8245.

SUPPLEMENTARY INFORMATION:

Background

Veterinary biological products subject to the provisions of the Virus-Serum-Toxin Act as amended by the Food Security Act of 1985 (21 U.S.C. 151-159), including diagnostic test kits, are required to be prepared in accordance with the production requirements for biological products contained in 9 CFR, part 114. An Outline of Production must be filed with the Animal and Plant Health Inspection Service (APHIS) for each product. The Outline of Production contains a detailed protocol of methods to be followed in the preparation of a biological product.

Currently, the regulations contain outline guides for the preparation of Outlines of Production for antisera, antitoxins, and normal sera; vaccines, bacterins, antigens, and toxoids; and for allergenic extracts. However, there is no such guide in the regulations for diagnostic test kits.

This amendment adds a regulation developed through the cooperative efforts of licensees and applicants, research organizations, academic institutes, and the National Veterinary Services Laboratories, for the preparation of Outlines of Production for diagnostic test kits. The requirements in the regulation are like those for the other categories of veterinary biological products listed in part 114, including guides for vaccines, bacterins, and antisera. Codifying the outline guide for diagnostic test kits in the regulations creates a uniform standard and helps to assure the purity, safety, potency and efficacy of these products.

On August 13, 1990, we published a proposed rule in the Federal Register (55 FR 32920-32922, Docket No. 90-003) discussing this amendment. The proposed rule provided that comments would be accepted for 60 days, until October 12, 1990.

We received comments from two licensed manufacturers, and one national trade association representing U.S. manufacturers of animal health products. While generally supporting the proposal, all those commenting suggested changes in one or more sections as proposed.

Based on the rationale set forth in the proposed rule and in this document, we are adopting this final rule.

One commenter suggested that 9 CFR 113.9(f) clarify that the regulation is for diagnostic kits based on an antigen antibody reaction. The Animal and Plant Health Inspection Service agreed with this comment, and appropriate changes have been made in the final rule.

Two respondents commented on the introductory section of the guide. Each felt that including a brief description of the kit in the introduction and a full description within the body of the text was redundant. The Animal and Plant Health Inspection Service does not agree with this comment. By asking for summary information in the introduction, APHIS is able to expedite the review and approval process. For example, in the introduction, the summary statement may interpret the meaning of the test result as applied to a disease situation in a particular animal or flock i.e., disease or no disease; whereas, more detail is required to explain the significance of the potency test as it relates to determining the efficacy of a particular serial of product and ultimately the accuracy of the individual test result. Therefore, APHIS does not agree that requiring both descriptions will detract from the purpose of the outline guide. However, as a result of this comment APHIS has determined that sections VI.A. and VI.B. in the proposed rule could be a combined into a single description of final container packaging. Therefore, in the final rule, we have made editorial changes in section VI. to provide for a single description of final container packaging in section VI.A. with the remainder of section VI. being redesignated accordingly.

Two respondents commented that section II.A. requesting information regarding the isolation, passage history, and characterization of the microorganism used as Master Seed was confusing since there is no Master Seed requirement for antigens used in diagnostics. We disagree with this comment. Microorganisms used in the preparation of biological products are referred to as seed. When tested and characterized in accordance with 9 CFR 113.55 and 113.64(c), they are called Master Seeds. Title 9, Code of Federal Regulations, § 114.5 requires that all microorganisms used in the preparation of biological products at licensed establishments shall be free from the causative agents of other diseases or conditions. This requirement applies to

microorganisms used to produce all biological products including diagnostics and is usually met by testing the microorganism in accordance with the above cited reference(s). The Animal and Plant Health Inspection Service has observed that producers frequently use the same microorganisms (Master Seeds) or antigen extracted from them to produce vaccines, bacterins, or diagnostic products. In recognition of this, APHIS structured section II.A. to allow producers who follow this practice to use the Master Seed reference, when appropriate, to describe the characteristics of the antigen; thereby avoiding redundant descriptions in the Outline of Production. Regardless of whether the producer is using seed, Master Seed, or extracted antigen, the applicant must show it to be free from the causative agents of other diseases (extraneous agents) or, in the case of extracted antigens, the applicant must demonstrate the characteristics of the antigen considered key to the performance of the product. The Animal and Plant Health Inspection Service considers such descriptions, data, and characteristics essential to predicting the performance of the product and requires that they be included in the Outline of Production.

One respondent commented that section II.B., which reads, "If an approved cell line is used, give dates of testing and approval," was ambiguous and suggested that it could lead to the interpretation that approved cell lines are not required to be used in conjunction with the production of diagnostics.

Another respondent commented that section II.B. should include the requirements for antigen produced in eggs. The Animal and Plant Health Inspection Service agrees with both comments, and appropriate changes have been made in the final rule.

One respondent commented that the reference to positive and negative reference standards in section III.A. be changed to positive and negative controls. The Animal and Plant Health Inspection Service agrees with this comment and has made editorial changes in sections III. and IV. in the final rule because each section refers to positive and negative controls. These changes further specify the information to be provided in each section.

One commenter inquired as to wnether APHIS is now requiring a description of the production processes for all components included in diagnostic kits, or if only critical components need be described. The commenter identified buffers, substrates, and nonbiological solutions as preparations not covered under the Virus-Serum-Toxin Act, and observes that there is no requirement that they be described in the Outline of Production. The Animal and Plant Health Inspection Service does not agree with this comment. Title 9, Code of Federal Regulations, 113.50 requires that all ingredients used in biological products shall meet accepted standards for purity and quality and shall not denature the specific substances in the product. Thus, considering that the components (ingredients) are necessary to the proper functioning of the kit they are subject to the provisions of the Act. The Animal and Plant Health Inspection Service considers all components in diagnostics to be critical components in that inferior components may result in a malfunctioning test and lead to an incorrect diagnosis. Therefore, APHIS requires that each component be described in the outline. When the same component is used in multiple diagnostics, the producer may file Special Outlines as provided by § 114.9(b), and avoid redundant descriptions. In order to clarify this point, APHIS has made editorial changes in section III.D. of the final rule.

Another respondent commented that a description of test interpretations and results should be included in section V. The Animal and Plant Health Inspection Service has always considered that a description of the test and the interpretation of the result belong in section V. The regulation as written requires these data. However, in response to this comment and for purposes of clarification we have rewritten section V. in the final rule to specify what should be included.

One respondent commented that several nonregulated entities, e.g., State diagnostic laboratories, research organizations, and academic institutes should be regulated. The regulatory authority of APHIS is limited to biological products shipped in or from the United States that are intended for use in the diagnosis, treatment, or prevention of diseases of animals. Diagnostic tests prepared and/or conducted at State diagnostic laboratories, research organizations, and academic institutions for their own use that are not shipped in or from the United States are not subject to the provisions of the Virus-Serum-Toxin Act. Thus, no change in the regulations has been made in response to the comment.

One respondent commented that there is no requirement in section I., Antibody Components, to differentiate between primary antibodies and secondary antibodies (conjugates). When organizing the guide, the Agency chose to have the preparation of primary antibodies described in section I., and secondary antibodies (conjugates) described in section III.B. This structure was chosen because the Agency has observed that many producers purchase prepared conjugates from firms that also supply them with other reagents. Thus, for the purpose of organization, the description of conjugates has been included in section III.B. with the other reagents. Regardless of where its preparation is described, APHIS considers the conjugate a critical component whose preparation must be described in the outline.

Executive Order 12291 and Regulatory Flexibility Act

This final rule is issued in conformance with Executive Order 12291 and Department Regulation 1512–1 and has been determined not to be a "major rule." Based on information compiled by the Department, it has been determined that this final rule has an effect on the economy of less than $100 million; does not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions and does not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Its purpose is to publish in the regulations a guideline for preparing Outlines of Production for diagnostic test kits which are required to be submitted to APHIS for filing. Prior to the implementation of these regulations licensees were required to prepare Outlines of Production in support of product license applications. However, no specific requirements were available to assist firms in the preparation of an outline for a diagnostic product. This often resulted in several revisions of an outline having to be made before an outline could be approved. This regulation will assist licensees in outline preparation and should make the licensing process more efficient. This regulation imposes no additional costs beyond what firms are already required to submit.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action does not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 0579–0013.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 114

Animal biologics.

Accordingly, title 9 of the Code of Federal Regulations is amended as follows:

PART 114—PRODUCTION REQUIREMENTS FOR BIOLOGICAL PRODUCTS

1. The authority citation for 9 CFR part 114 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 114.9 is amended by adding paragraph (f) to read as follows:

§ 114.9 Outline of Production Guidelines.

* * * * *

(f) Outlines of Production for diagnostic test kits based on antigen-antibody reactions, and other diagnostics whose production methods are amenable to description as described herein shall be written according to the following requirements:

Outline Guide for Diagnostic Test Kits

License No.	Name of product	Date

Introduction

Provide a brief description of the kit as follows:

1. Principle of the test (ELISA, latex agglutination, etc.).
2. Antigen or antibody detection test.
3. Sample(s) used for testing (serum, whole blood, tears, etc.).
4. List reagents, references, and equipment included.
5. Identify materials obtained under split manufacturing agreements.
6. General description of test interpretations and their limitations, including followup tests.

I. *Antibody Components*

A. Production of polyclonal antibody components.

1. If purchased, list suppliers, criteria for acceptability, and describe all tests performed after receipt to determine that specifications have been met.

2. If produced in-house, describe the species, age, weight, conditions, and general health of all animals used in antisereum production.

a. Preinjection considerations:

Describe the examination, preparation, care, quarantine procedures, and treatments administered before immunization(s). Describe all tests used to determine suitability for use. Describe the preparation of any standard negative serum(s) collected prior to immunization.

b. Immunization of animals.

i. Describe the character and dose of the antigen; if adjuvant is used provide details on its preparation. If commercial product is used include its true name as shown on the label, the manufacturer, serial number, and expiration date.

ii. Describe the method and schedule for immunizations.

iii. Describe the method for harvesting and evaluating the immunization product, including tests for acceptability.

iv. Provide number and intervals between harvests, volume obtained, and any other pertinent information.

B. Production of Monoclonal Antibody Components.

1. Hybridoma components:

a. If hybridoma components are purchased, list suppliers and criteria for acceptability; if tests are performed after receipt, describe fully.

b. If hybridomas are prepared inhouse, identify the antigen(s) used, describe the immunization scheme, and the species of animal used.

c. Identify the tissue of origin, and the procedures for harvesting, isolating, and identifying the immune cells.

d. Describe the source, identity, and the product secreted (light or heavy chain) by the parent Myeloma Cell Line.

e. Summarize cloning and recloning procedures, including clone characterization and propagation, if appropriate.

f. If appropriate, describe procedures for establishing and maintaining seed lots.

g. Describe any other pertinent tests or procedures performed on the hybridoma cell line.

2. Antibody production:

a. Describe the production method. If produced in cell culture, animal serum additives must conform to 9 CFR 113.53. If produced in animals, describe fully including husbandry practices and passage procedures.

b. Provide the criteria for acceptable monoclonal antibody, including tests for purity.

c. Describe all tests or other methods used to ensure uniformity between production lots of monoclonal antibody. Include all reaction conditions, equipment used, and reactivity of the component.

d. Describe all characterization procedures and include the expected reactivity of all reference monoclonal antibodies.

II. *Antigen Preparation*

A. Identify the microorganism(s) or antigen being used. If previously approved Master Seed virus, bacteria, or antigen derived therefrom is used, provide pertinent information on the testing performed, and details of dates of United States Department of Agriculture confirmatory tests and approval, as appropriate.

B. Describe all propagation steps, including identification of cell cultures, media ingredients, cell culture conditions, and harvest methods. For antigen produced in eggs, give the egg source, age, and route of inoculation. If cell lines are being used, give dates of testing and approval as specified in 9 CFR 113.52.

C. Describe procedures used for extracting and characterizing the antigen.

D. Describe the method used to standardize the antigen.

E. If the antigen is purchased, identify the supplier and describe the criteria for acceptable material, including all tests performed by the producer and/or the recipient to determine acceptability.

III. *Preparation of Standard Reagents*

A. Describe the positive and negative controls included in the kit. If purchased, list suppliers and criteria for acceptance.

B. Describe the preparation and standardization of the conjugate(s). If purchased, list suppliers and criteria for acceptance.

C. Describe the preparation and standardization of the substrate(s). If purchased, list suppliers and criteria for acceptance.

D. Identify buffers, diluents, and other reagents included in the kit. The preparation of these components may be described in this section or in filed Special Outlines.

IV. *Preparation of the Product*

Fully describe methods used to standardize antigens, reference standards, positive control serum, negative control serum, and standard reagents from production/purchase to completion of finished product in final containers, including the following:

1. Composition and quantity of preservative in each.

2. Method of filling, plating, or attaching the antigen or antibody component to a solid phase.

3. Minimum and maximum acceptable fill volumes for each final container of reagent included in the kit.

4. The disposition of unsatisfactory material.

V. *Testing*

Refer to all applicable standard requirements.

A. Purity.

Describe all tests of the kit for purity or specify the exemption as provided in 9 CFR 113.4.

B. Safety.

In vitro products are exempt from safety tests.

C. Potency.

Provide details of tests used to determine the relative reactivity of the kit including minimum requirements for a satisfactory test.

Reference standards and control serum used for this purpose should be identified by unique codes or lot numbers.

VI. *Postpreparatory Steps*

A. Describe the form and size of final containers of each reagent/component included in the kit.

B. Describe the collection, storage, and submission of representative samples. Refer to 9 CFR 113.3(b)(7).

C. Specify the expiration date. Refer to 9 CFR 114.13.

D. Provide details of recommendations for use, including all limitations, qualifications, and interpretation of results.

E. Submit confidentiality statement identifying specific parts of the outline containing information, the release of which would cause harm to the submitter.

Done in Washington, DC, this 26th day of April 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-10416 Filed 5-1-91; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-AWA-13]

Alteration of the Chicago Terminal Control Area; IL

AGENCY: Federal Aviation Administration.

ACTION: Final rule; Correction.

SUMMARY: This action corrects the description of the Chicago O'Hare International Airport Terminal Control Area (TCA). The final rule, published in the Federal Register, contained an error in the coordinates for the airport reference point. This action corrects that error.

EFFECTIVE DATE: May 2, 1991.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9255.

SUPPLEMENTARY INFORMATION:

History

A final rule (Federal Register Document 91-7632), published April 2, 1991, modified the TCA at Chicago O'Hare International Airport (56 FR 13526). That rule contained an inadvertent error in the coordinates for the airport reference point for the Chicago O'Hare International Airport. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, Federal Register Document 91-7632, as published in the Federal Register on April 2, 1991, (56 FR 13526) is corrected as follows:

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C.106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.401(b) [Amended]

2. Section 71.401 (b) is corrected to read as follows:

Chicago, IL [Corrected]

Under the title, "Primary Airport," remove "Chicago O'Hare International Airport (lat. 41°58'57" N. Long. 87°54'25" W.)", and substitute "Chicago O'Hare International Airport (lat. 41°58'46" N. long 87°54'16" W.)"

Issued in Washington, DC, on April 19, 1991

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 91-10365 Filed 5-1-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 75

[Airspace Docket No. 90-ASW-30]

Alteration of Jet Route J-66; TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters Jet Route J-66 by extending that route from Dallas, TX, to Newman, TX, via Abilene, TX. This jet route improves sector coordination and eliminates a point of congestion with the J-4 crossing point at Wink, TX. This action improves traffic flow and reduces controller workload.

EFFECTIVE DATE: 0901 u.t.c., July 25, 1991.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On July 13, 1990, the FAA proposed to amend part 75 of the Federal Aviation Regulations (14 CFR part 75) to extend Jet Route J-66 from Dallas, TX, to Newman, TX, via Abilene, TX (55 FR 28775). The majority of traffic departing Dallas International Airport proceed via El Paso, TX. However, all aircraft proceeding westbound are given radar vectors to Abilene, and then proceed direct to Newman. This alteration of J-66 eliminates the congestion caused by J-4 traffic proceeding over Wink, TX. Also, this shortened route saves fuel. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 75.100 of part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The Rule

This amendment to part 75 of the Federal Aviation Regulations alters Jet Route J-66 by extending that route from Dallas, TX, to Newman, TX, via Abilene, TX. This jet route improves sector coordination and eliminates a point of congestion with the J-4 crossing point at Wink, TX. This action improves traffic flow and reduces controller workload.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 75 of the Federal Aviation Regulations (14 CFR part 75) is amended, as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J-66 [Amended]

By removing the words "From Dallas-Fort Worth, TX, via" and substituting the words "From Newman, TX; Abilene, TX; Dallas-Fort Worth, TX;"

Issued in Washington, DC, on April 25, 1991.

Richard Huff,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 91-10366 Filed 5-1-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 546

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for a new animal drug application (NADA) from Boehringer Ingelheim Animal Health, Inc., to Pennfield Oil Co. (formerly Pennfield Chemical Corp.).

EFFECTIVE DATE: May 2, 1991.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1414.

SUPPLEMENTARY INFORMATION: Boehringer Ingelheim Animal Health, Inc., 2621 North Belt Highway, St. Joseph, MO 64502, informed FDA of the change of sponsor of NADA 65-480 to Pennfield Oil Co. (formerly Pennfield Chemical Corp.), 14040 Industrial Rd., Omaha, NE 68144. The NADA provides for use of chlortetracycline hydrochloride soluble powder to treat swine and calves as in 21 CFR 546.110c (c)(5)(iii) and (c)(5)(iv). FDA is amending the regulations to reflect the change of sponsor.

The agency is amending the table in 21 CFR 510.600 (c)(1) and (c)(2) to reflect a name change from "Pennfield Chemical Corp." to "Pennfield Oil Co." and 21 CFR 546.110c(c)(2) to reflect the change of sponsor.

List of Subjects in 21 CFR

Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Part 546

Animal drugs, Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 546 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) in the entry for "Pennfield Chemical Corp." and in the table in paragraph (c)(2) in the entry for "053389" by removing "Pennfield Chemical Corp." and inserting in its place "Pennfield Oil Co.".

PART 546—TETRACYCLINE ANTIBIOTIC DRUGS FOR ANIMAL USE

3. The authority citation for 21 CFR part 546 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 546.110c [Amended]

4. Section 546.110c *Chlortetracycline powder (chlortetracycline hydrochloride powder)* is amended in paragraph (c)(2) by removing "000010" and replacing it with "053389".

Dated: April 26, 1991.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation Center for Veterinary Medicine.

[FR Doc. 91-10371 Filed 5-1-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 216

RIN 1010-AB61

Amendment of Production Accounting Regulations

March 12, 1991.

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: The Minerals Management Service (MMS) is amending its royalty production accounting regulations to specify the addresses required for receipt of information collection reports and forms submitted by reporters of mineral production from Federal and Indian leases and federally approved agreements. This final rulemaking also establishes the date of receipt of reports and forms received at the required MMS address(es) after 4 p.m. mountain time as next day receipts.

EFFECTIVE DATE: June 3, 1991.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, Minerals Management Service, Royalty Management Program, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 3910, Denver, Colorado 80225 (303) 231-3432 or (FTS) 326-3432.

SUPPLEMENTARY INFORMATION: The principal author of this final rule is Marvin D. Shaver of the Rules and Procedures Branch, Royalty Management Program, Minerals Management Service, Lakewood, Colorado.

I. Introduction

Part 216 of title 30 of the Code of Federal Regulations (30 CFR part 216) contains regulations governing the reporting of oil, gas and solid minerals operations information on Federal and Indian leases or federally approved agreements, including the Outer Continental Shelf. Section 216.10, "Information Collection," identifies the various information collection reports and forms that are required to be submitted to MMS by the reporter for mineral production. The information collected is used by MMS to permit accounting and auditing of reported production information. Section 216.15, "Reporting Instructions," refers to the *Production Accounting and Auditing System (PAAS) Reporter Handbook* and the *PAAS Onshore Oil and Gas Reporter Handbook* for specific

guidance on how to prepare and submit the mandatory information collection reports and forms to MMS.

Although the PAAS Reporter Handbooks identify the specific MMS address to which the completed reports and forms must be mailed, there are many instances when the documents are mailed or delivered by the reporter to the wrong address, such as to the address of a contractor performing work for MMS. Consequently, there is a delay in receipt of the document by the appropriate MMS office, which could result in assessments for late reporting. The inclusion of the appropriate MMS address in the regulations covering PAAS is needed to provide clear direction to the reporter, improve timely reporting by companies, and establish consistency with the Auditing and Financial System (AFS) which already has address information in the regulations (see 30 CFR 218.51(f)).

Because responsible MMS employees may not be available to record the receipt of documents after normal MMS working hours, MMS considers documents received after 4 p.m. as next day receipts. There have been instances where this policy has resulted in late reporting assessments or rejection of administrative appeals as untimely. The PAAS Reporter Handbooks do not state this policy and there is a need to codify the policy in MMS's regulations to avoid misunderstandings on the part of reporters.

The rule will also expressly provide that a report is considered "received" when it is delivered to the specified MMS address. Mailing a report or depositing it for delivery with a courier does not constitute receipt by MMS.

II. Final Rulemaking

The purpose of this final rulemaking is to codify the MMS address(es) to which the reports and forms should be mailed or delivered. Different addresses are specified depending on whether the report is mailed, including U.S. Postal Service express mail, or sent by courier or overnight mail. The final rule also establishes the date of receipt of reports received at the established MMS addresses after 4 p.m. mountain time as next day receipts. This final rulemaking is consistent with regulations on the appropriate address for the AFS reports in 30 CFR 218.51(f), which establishes the address for payors to mail or deliver the Report of Sales and Royalty Remittance (Form MMS–2014 or Form MMS–4014) and the applicable payment.

III. Procedural Matters

Administrative Procedure Act

The changes included in this rulemaking are to codify administrative procedures and are not substantive changes. Accordingly, pursuant to 5 U.S.C. 553(b), it has been determined that it is unnecessary to issue proposed regulations before the issuance of this final regulation.

Executive Order 12291 and the Regulatory Flexibility Act

Because this rulemaking is to codify administrative procedure, the Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

This final rule codifies Agency addresses to which mandatory reports and forms should be mailed with no additional reporting or other requirements from industry.

Executive Order 12630

This final rulemaking does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared pursuant to Executive Order 12630, "Government Action and Interference with Constitutionally Protected Property Rights."

Paperwork Reduction Act of 1980

This final rulemaking does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

National Environmental Policy Act of 1969

The Department has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

List of Subjects in 30 CFR Part 216

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Penalties, Petroleum, Public lands-mineral resources, and Reporting and recordkeeping requirements.

Dated: April 8, 1991.

Jennifer A. Salisbury,

Deputy Assistant Secretary, Land and Minerals Management.

For the reasons set forth in the preamble, 30 CFR part 216 is amended as follows:

PART 216—PRODUCTION ACCOUNTING

1. The authority citation for part 216 is revised to read as follows:

Authority: 5 U.S.C. 301 et seq.; 5 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 31 U.S.C. 9701; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. A new § 216.16 is added under subpart A, General Provisions, to read as follows:

§ 216.16 Where to report.

(a) All reporting forms listed in § 216.10 of this subpart that are mailed or sent by U.S. Postal Service express mail shall be mailed to the following address: Minerals Management Service, Royalty Management Program, P.O. Box 17110, Denver, Colorado 80217.

(b) Reports delivered to MMS by special couriers or overnight mail, except U.S. Postal Service express mail, shall be addressed as follows: Minerals Management Service, Royalty Management Program, Building 85, Denver Federal Center, room A–212, Revenue and Document Processing, Denver, Colorado 80225.

(c) A report is considered received when it is delivered to MMS at the addresses specified in paragraphs (a) and (b) of this section. Reports received at the MMS addresses specified in paragraphs (a) and (b) of this section after 4 p.m. mountain time are considered received the following business day.

* * * * *

[FR Doc. 91–10437 Filed 5–1–91; 8:45 am]
BILLING CODE 4310–MR–M

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30 CFR Part 250

RIN 1010–AB53

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Reports and Investigations of Apparent Violations

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations governing oil and gas and

sulphur operations in the Outer Continental Shelf (OCS) by adding a provision specifying that any person having knowledge of an apparent violation of Minerals Management Service (MMS) laws, regulations, or lease requirements can report the apparent violation, and MMS will investigate the allegation. The provision was included in the regulations in effect prior to 1988 but was dropped when the offshore operating rules were revised in 1988. Although MMS routinely investigates allegations of violations as a matter of established procedure in fulfilling its responsibilities under the Outer Continental Shelf Lands Act (OCSLA), the reinstatement of a specific regulatory provision declaring that MMS will investigate reports of apparent violations will reinforce the public's awareness of this procedure and reassure the public that apparent violations reported to MMS will be investigated.

EFFECTIVE DATE: June 3, 1991.

FOR FURTHER INFORMATION CONTACT: John V. Mirabella, Acting Chief, Engineering and Standards Branch, telephone (703) 787–1600.

SUPPLEMENTARY INFORMATION: The regulations at 30 CFR part 250, subpart A, are being amended by the addition of § 250.25 to specify that MMS will investigate allegations of apparent violations that may be submitted to MMS. This amendment was published as a proposed rule in the **Federal Register** on August 16, 1990 (55 FR 33539). In proposing this addition to the regulations, MMS noted that it uses all possible sources of information to identify situations where lessees are not in full compliance with requirements of the law, the regulations, or the lease. This approach reflects MMS's commitment to diligently pursue its responsibilities to ensure the operational and environmental safety of OCS oil and gas operations. This amendment is not necessary for MMS to investigate allegations of apparent violations since that authority is provided in section 22(e) of the OCSLA; however, the regulation is being promulgated in order to increase public awareness that an alleged violation may be reported to and will be investigated by MMS.

Three comment letters were received on the proposed amendment. All were from companies in the oil and gas industry. One commenter questioned the promulgation of the regulation without a showing of need. This comment was based on a conern about proliferation of unnecessary regulations. The concern appears to be based on a perception that the regulation would add a regulatory procedure not presently in force and thereby contribute to an expansion of the regulation of offshore oil and gas activities. Since the amendment only incorporates a procedure already available, MMS does not believe that the addition of this rule to the regulations contributes to unnecessary proliferation of regulations as described by the commenter.

Another commenter suggested that the rule provide for timely notification to the lessee and affected operator that a report of an alleged violation had been received or that an apparent violation had been detected and would be investigated. The MMS believes such notification to be unnecessary for the protection of a party alleged to have committed a violation in view of the fact that, prior to assessment of a penalty, ample safeguards exist for a party to request a hearing, provide evidence and arguments, respond to and rebut material concerning the case, and utilize other available safeguards. Furthermore, when warranted, the proper authorities need to be able to investigate alleged violations of a criminal nature without notifying the alleged violator in order to ensure preservation of evidence and reduce the possibility for concealment of serious violations.

A final commenter suggested that the rule be revised to require that persons reporting apparent violations submit allegations in writing accompanied by a factual statement citing the concerns and observations of wrongdoing. This commenter further proposed that if the allegations prove false, MMS should be required to send a letter to the operator identifying the individual who submitted the allegations and stating that the allegations had been proven false. The commenter maintained that individuals may allege violations without supporting data or observations in order to injure an operator's reputation, and that an operator is at a disadvantage because there is little or no documentation to identify the person making the allegation or the basis for it. The MMS does not believe that the matter about which this commenter is concerned (e.g., damage to the operator's reputation) would arise due to lack of knowledge as to the identity of a person alleging a violation by that operator and, conversely, such damage would not necessarily be avoided merely by disclosure of the identity of a party reporting an apparent violation. As MMS noted in the proposed rule, on the whole, OCS lessees conduct their leasehold operations in compliance with MMS requirements. In view of this and the fact that, in and of itself, an MMS investigation is not a indication of wrongdoing, it does not appear that an allegation of an apparent violation would, by itself, damage a lessee's or operator's reputation. Furthermore, no determination that an operator or lessee has committed a violation can be made without clear supporting evidence. The MMS does not agree that persons reporting apparent violations should be required to identify themselves. The MMS will look into all allegations received, including those reported anonymously and those allegations for which no supporting documentation or facts are provided. This determination was made in recognition that occasionally parties having information about violations cannot report such violations without risking loss of employment or other damage unless they do so without identifying themselves. Furthermore, in no case can any action be taken against the alleged violator without verification of the allegations and acquisition of supporting evidence. The extensive safeguards available to the lessee or operator under current regulations and laws remain fully operable.

Author

This document was prepared by Mary B. McDonald, Engineering and Standards Branch, MMS.

Executive Order (E.O.) 12291

The Department of the Interior (DOI) has determined that this rule will not have a significant effect on the economy and is not a major rule under E.O. 12291; therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

The DOI has determined that this rule will not have a significant economic effect on small entities since offshore activities are complex undertakings generally engaged in by enterprises that are not considered small entities.

Paperwork Reduction Act

The rule does not contain any information collection requiring approval by the Office of Management and Budget pursuant to 44 U.S.C. 3501 *et seq.*

Takings Implication Assessment

The DOI certifies that the rule does

not represent a Government action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment has not been prepared pursuant to E.O. 12630, Government Action and Interference with Constitutionally Protected Property Rights.

National Environmental Policy Act

The DOI has determined that this does not constitute a major Federal action affecting the quality of the human environment; therefore, preparation of an Environmental Impact Statement is not required.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands-mineral resources, Public lands-rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: April 2, 1991.

Barry Williamson,

Director, Minerals Management Service.

For the reasons set forth above, 30 CFR part 250 is amended as follows:

PART 250—[AMENDED]

1. The authority for 30 CFR part 250 continues to read as follows:

Authority: Sec. 204, Public Law 95–372, 92 Stat. 629 (43 U.S.C. 1334).

2. A new § 250.25 is added to subpart A to read as follows:

§ 250.25 Reports and investigations of apparent violations.

Any person may report to MMS an apparent violation or failure to comply with any provision of the Act, or any provision of a lease, license, or permit issued pursuant to the Act, or any provision of any regulation or order issued under the Act. When a report of an apparent violation has been received or when an apparent violation has been detected by MMS personnel, the matter will be investigated in accordance with MMS procedures.

[FR Doc. 91–10438 Filed 5–1–91; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AD83

Veterans Education; The Veterans' Benefits and Programs Improvement Act of 1988 and the Montgomery GI Bill—Active Duty

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Veterans' Benefits and Programs Improvement Act of 1988 contains several provisions which affect the Montgomery GI Bill—Active Duty. These include liberalizing the eligibility requirements, providing a death benefit, permitting cooperative training, permitting refresher, remedial and deficiency training, providing tutorial assistance to veterans and servicemembers in this program and liberalizing the standards for determining extensions to a veteran's basic period of eligibility. These final regulations will acquaint the public with the way in which the Department of Veterans Affairs will administer these provisions of law.

EFFECTIVE DATE: Except for the following, the effective date of this regulation is November 18, 1988. The revisions to these regulations and the new regulations are effective on the same date as the provisions of law on which they are based. Consequently, the revisions to the following regulations are retroactively effective on July 1, 1985: That portion of § 21.7042(a)(5), those portions of § 21.7042(b) (6) and (7), that portion of § 21.7072 dealing with discharges for a preexisting medical condition, § 21.7140(g), and § 21.7280. The revisions to the following regulations are retroactively effective on October 1, 1987: That portion of § 21.7042(a)(5), those portions of § 21.7042(b) (6) and (7) and that portion of § 21.7072 dealing with involuntary discharges for the convenience of the government as the result of a reduction in force. The revisions to the following sections are retroactively effective on November 18, 1988: § 21.7020(b)(38), § 21.7042(a)(3), § 21.7042(b) (2), (3) and (4), § 21.7042 (d), (e) and (f), § 21.7044(a), that portion of § 21.7044(b) dealing with eligibility criteria for veterans who are committed to serve four years in the Selected Reserve before they begin serving on active duty, § 21.7044(c), § 21.7050, § 21.7051 and § 21.7072(c). The new regulations, § 21.7141 and § 21.7073 are retroactively effective on November 18, 1988. The revisions to the following regulations are retroactively effective on January 1, 1989: § 21.7020(b)(39), that portion of § 21.7076 dealing with cooperative training, § 21.7136, § 21.7137, § 21.7138, § 21.7220 and that portion of § 21.7222 dealing with cooperative training. The revisions to the following regulations are retroactively effective on June 1, 1989: § 21.7020(b)(19) and § 21.7122(e). The following regulations are retroactively effective on August 15, 1989: § 21.7020(b)(26), that portion of § 21.7076 dealing with tutorial assistance, § 21.7110, § 21.7112(b), and that portion of § 21.7222 dealing with refresher and deficiency training.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233–2092.

SUPPLEMENTARY INFORMATION: On pages 42208 through 42216 of the **Federal Register** of October 16, 1990, VA proposed amending certain regulations in part 21, 38 CFR and also proposed adding some regulations to that part. The purpose of this proposal was to implement those provisions of the Veterans' Benefits and Programs Improvement Act of 1988 (Pub. L. 100–689) which affect the Montgomery GI Bill—Active Duty. Interested people were given 32 days to submit comments, suggestions or objections. VA received two letters, both from officials of State governments.

One letter thanked VA for publishing these regulations for comment, but the letter writer had no comments to make. The second letter writer stated he found nothing that could be construed as divergent from the intent of the act, nothing that is obviously inimical to the welfare and best interests of the veteran, and nothing that impacts the function of the State approving agencies in a significant manner. Inasmuch as neither letter writer wanted the proposal changed, VA is making final the revised regulations and new regulations that were contained in the proposal. However, corrections are being made to add § 21.7020, paragraph (b)(19)(i)(B) which was inadvertently omitted on page 42209 of the proposed rule, and to correct § 21.7051 to add missing text, which was inadvertently omitted at the end of paragraph (a)(2) of that section on page 42213.

The Department of Veterans Affairs has determined that these amended regulations do not contain a major rule

as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs has certified that these amended regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulations affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by these regulations is 64.124.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 13, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR part 21, Vocational Rehabilitation and Education is amended as follows:

PART 21—[AMENDED]

1. In § 21.7020 paragraphs (b)(19) and (b)(26) are revised and paragraphs (b)(38) through (b)(40) are added to read as follows:

§ 21.7020 Definitions.

* * * * *

(b) *Other definitions.*

* * * * *

(19) *Mitigating circumstances.* (i) The term "mitigating circumstances" means circumstances beyond the veteran's or servicemember's control which prevent him or her from continuously pursuing a program of education. The following circumstances are representative of those which VA considers to be mitigating. This list is not all-inclusive.

(A) An illness of the veteran or servicemember,

(B) An illness or death in the veteran's or servicemember's family,

(C) An unavoidable change in the veteran's conditions of employment,

(D) An unavoidable geographical transfer resulting from the veteran's employment,

(E) Immediate family or financial obligations beyond the control of the veteran which require him or her to suspend pursuit of the program of education to obtain employment.

(F) Discontinuance of the course by the educational institution,

(G) Unanticipated active duty military service, including active duty for training,

(H) Unanticipated difficulties in caring for the veteran's or eligible person's child or children.

(ii) In the first instance of a withdrawal after May 31, 1989, from a course or courses for which the veteran received educational assistance under title 38, U.S. Code, VA will consider that mitigating circumstances exist with respect to courses totaling not more than six semester hours or the equivalent.

(Authority: 38 U.S.C. 1434, 1780(a)(1); Pub. L. 100–689) (June 1, 1989)

* * * * *

(26) *Refresher course.* The term "refresher course" means—

(i) Either a course at the elementary or secondary level to review or update material previously covered in a course that has been satisfactorily completed, or

(ii) A course which permits an individual to update knowledge and skills or be instructed in the technological advances which have occurred in the individual's field of employment and which is necessary to enable the individual to pursue an approved program of education.

(Authority: 38 U.S.C. 1434(a); Pub. L. 100–689) (Nov. 18, 1988)

* * * * *

(38) *Disabling effects of chronic alcoholism.* (i) The term "disabling effects of chronic alcoholism" means alcohol-induced physical or mental disorders or both, such as habitual intoxication, withdrawal, delirium, amnesia, dementia, and other like manifestations of chronic alcoholism which, in the particular case—

(A) Have been medically diagnosed as manifestations of alcohol dependency or chronic alcohol abuse, and

(B) Are determined to have prevented commencement or completion of the affected individual's chosen program of education.

(ii) A diagnosis of alcoholism, chronic alcoholism, alcohol-dependency, chronic alcohol abuse, etc., in and of itself, does not satisfy the definition of this term.

(iii) Injury sustained by a veteran as a proximate and immediate result of activity undertaken by the veteran while physically or mentally unqualified to do so due to alcoholic intoxication is not considered a disabling effect of chronic alcoholism.

(Authority: 38 U.S.C. 105, 1431(d); Pub. L. 100–689) (Nov. 18, 1988)

(39) *Cooperative course.* The term "cooperative course" means a full-time program of education which consists of institutional courses and alternate phases of training in a business or industrial establishment with the training in the business of industrial establishment being strictly supplemental to the institutional portion.

(Authority: 38 U.S.C. 1402, 1682(a); Pub. L. 100–689) (Jan. 1, 1989)

(40) *Open period.* The term "open period" means a period of time beginning on December 1, 1988, and ending on June 30, 1989.

(Authority: 38 U.S.C. 1418; Pub. L. 100–689) (Nov. 18, 1988)

2. In § 21.7042 paragraphs (a)(3) and (a)(5) (i) through (v) are revised to read as follows:

§ 21.7042. Basic eligibility requirements.

(a) * * *

(3) The individual must complete the requirements of a secondary school diploma (or an equivalency certificate) before completing the service requirements of this paragraph, and

(Authority: 38 U.S.C. 1411) (Nov. 18, 1988)

(5) * * *

(i) For a service-connected disability, or

(ii) For a medical condition which preexisted service on active duty and which VA determines is not service connected, or (July 1, 1985)

(iii) Under 10 U.S.C. 1173 (hardship discharge), or

(iv) For convenience of the government—

(A) After completing at least 20 continuous months of active duty if his or her initial obligated period of active duty is less than three years, or

(B) After completing 30 continuous months of active duty if his or her initial obligated period of active duty is at least three years, or

(v) Involuntarily for the convenience of the Government as a result of a

reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(Authority: 38 U.S.C. 1411; Pub. L. 98–525, Pub. L. 99–576, Pub. L. 100–689) (Oct. 1, 1987)

3. In § 21.7042 paragraphs (b)(2) through (b)(4) and (b)(6) through (b)(8) are revised and (b)(9) is added to read as follows:

§ 21.7042 Basic eligibility requirements.

* * * * *

(b) * * *

(2) The individual must complete the requirements of a secondary school diploma (or an equivalency certificate) before completing the service requirements of this paragraph.

(3) Except as provided in paragraph (b)(6) of this section, the individual must serve at least two years of continuous active duty in the Armed Forces characterized by the Secretary concerned as honorable service.

(4) Except as provided in paragraph (b)(7) of this section, after completion of active duty service the individual must serve at least four continuous years service in the Selected Reserve, during which the individual must satisfactorily participate in training as prescribed by the Secretary concerned.

(Authority: 38 U.S.C. 1412; Pub. L. 100–689) (Nov. 18, 1988)

* * * * *

(6) An individual is exempt from serving two years on active duty as provided in paragraph (b)(3) of this section when the individual is discharged or released from the Armed Forces during those two years—

(i) For a service-connected disability, or

(ii) For a medical condition which preexisted such service on active duty and which VA determines is not service connected, or (July 1, 1985)

(iii) Under 10 U.S.C. 1173 (hardship discharge), or

(iv) In the case of an individual discharged or released after 20 months of such service, for the convenience of the Government, or

(v) Involuntarily for convenience of the Government as a result of a reduction in force as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy. (Oct. 1, 1987)

(7) An individual is exempt from serving four years in the Selected Reserve as provided in paragraph (b)(4) of this section when—

(i) After completion of the active duty service required by this paragraph the individual serves as continuous period of service in the Selected Reserve and is discharged or relesed from service in the Selected Reserve—

(A) For a service-connected disability, or

(B) For a medical condition which preexisted the individual's becoming a member of the Selected Reserve and which VA determines is not service connected, or (July 1, 1985)

(C) Under 10 U.S.C. 1173 (hardship discharge), or

(D) After a minimum of 30 months of such service for the convenience of the Government, or

(E) Involuntarily for the convenience of the Government as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(ii) The individual is obligated at the beginning of the two years active duty described in paragraph (b)(3) of this section to serve the four years in the Selected Reserve as described in subparagraph (b)(4) of this section, and during the two years of active duty service he or she is discharged or released from active duty in the Armed Forces—

(A) For a service-connected disability, or

(B) For a medical condition which preexisted that period of active duty and which VA determines is not service connected. (Oct. 1, 1987)

(8) For purposes of determining continuity of Selected Reserve service, the Secretary concerned may prescribe by regulation a maximum period of time during which the individual is considered to have continuous service in the Selected Reserve even though he or she—

(i) Is unable to locate a unit of the Selected Reserve of the individual's Armed Force that the individual is eligible to join or that has a vacancy, or

(ii) Is not attached to a unit of the Selected Reserve for any reason prescribed by the Secretary concerned by regulation other than those stated in paragraph (b)(8)(i) of this section.

(9) Any decision as to the continuity of an individual's service in the Selected Reserve made by the Department of Defense or the Department of Transportation under regulations described in subparagraph (8) of this subparagraph shall be binding upon VA.

(Authority: 38 U.S.C. 1411, 1412; Pub. L. 98–525, Pub. L. 100–689) (July 1, 1985, Oct. 1, 1987)

4. In § 21.7042 paragraphs (c) through (f) are redesignated as paragraphs (d) through (g) and a new paragraph (c) is added to read as follows:

§ 21.7042 Basic eligibility requirements.

* * * * *

(c) *Eligibility based on withdrawal of election not to enroll.* As stated in paragraph (f) of this section, a veteran or servicemember who elects not to enroll in this educational assistance program is generally not eligible for educational assistance. However, such a person may establish eligibility by meeting the requirements of this paragraph.

(1) The individual must withdraw an election not to enroll. Only someone who meets the provisions of this subparagraph may make this withdrawal. Such a withdrawal is irrevocable. The withdrawal may only be made during the period beginning on December 1, 1988, and ending on June 30, 1989, by a servicemember who—

(i) Must have first become a member of the Armed Forces or first entered on active duty as a member of the Armed Forces during the period beginning July 1, 1985, and ending June 30, 1988;

(ii) As of the day of withdrawal of the election must have served continuously on active duty without a break in service since the date the individual first became a member of the Armed Forces or first entered on active duty as a member of the Armed Forces;

(iii) Must be serving on active duty on the day he or she withdraws the election;

(iv) Withdraws the election in the form prescribed by the Secretary of Defense or in the case of the Coast Guard by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(2) The individual must continue to serve the period of service that the individual was obligated to serve on December 1, 1988.

(3) The individual must either—

(i) Complete the period of service that he or she was obligated to serve on December 1, 1988, which, if an individual's initial obligated period of service was scheduled to end after November 30, 1988, but he or she extended an enlistment or reenlisted, before December 1, 1988, VA will

require that the individual complete the extension of reenlistment; or

(ii) Before completing the period of service he or she was obligated to serve on December 1, 1988, the individual is discharged or released from active duty for—

(A) A service-connected disability, or

(B) A medical condition which preexisted that period of service and which the Secretary determines is not service connected, or

(C) Hardship (10 U.S.C. 1173); or

(iii) Before completing the period of service he or she was obligated to serve on December 1, 1988, have been—

(A) Discharged or released from active duty for the convenience of the Government after completing not less than 20 months of that period of service, if such period was less than three years, or 30 months, if that period was at least three years, or

(B) Involuntarily discharged or released from active duty for the convenience of the government as a result of a reduction in force as determined by the Secretary concerned in accordance with regulations prescribed by the Secretary of Defense.

(4) Before completing the service he or she was obligated to serve on December 1, 1988, the individual must complete the requirements of a secondary school diploma (or an equivalency certificate).

(5) Upon completion of the period of service he or she was obligated to serve on December 1, 1988, the individual must—

(i) Be discharged from service with an honorable discharge, be placed on the retired list, be transferred to the Fleet Reserve or Fleet Marine Corps Reserve, or be placed on the temporary disability retired list; or

(ii) Continue on active duty; or

(iii) Be released from active duty for further service in a reserve component of the Armed Forces after service on active duty characterized by the Secretary concerned as honorable service.

(Authority: 38 U.S.C. 1418) (Nov. 18, 1989)

* * * * *

5. In § 21.7042 the title of newly redesignated paragraph (e), and newly redesignated paragraphs (e)(1)(ii), (e)(2), (f)(1), and (g)(2) through (g)(3) are revised and paragraph (g)(4) is added to read as follows:

§ 21.7042 Basic eligibility requirements.

* * * * *

(e) *Eligibility to receive educational assistance while serving a qualifying period of active duty.*

(1) * * *

(ii) Has completed the requirements of a secondary school diploma (or an equivalency certificate) before beginning training;

* * * * *

(2) Subject to paragraph (e)(3) of this section, VA will consider an individual to have met the requirements of paragraph (b) of this section when he or she—

(i) Has met the active duty requirements of paragraph (b) of this section;

(ii) Is committed to serve 4 years in the Selected Reserve; and

(iii) Has completed the requirements of a secondary school diploma (or an equivalency certificate) before beginning the training for which he or she wishes to receive educational assistance.

* * * * *

(f) *Restrictions on establishing eligibility.* (1) An individual who, after June 30, 1985, first becomes a member of the Armed Forces, may elect not to receive educational assistance under 38 U.S.C. ch. 30. This election must be made at the time the individual initially enters on active duty as a member of the Armed Forces. An individual who makes such an election is not eligible for educational assistance under 38 U.S.C. ch. 30 unless he or she withdraws the election as provided in paragraph (c) of this section.

(Authority: 38 U.S.C. 1418; Pub. L. 100-689) (Nov. 18, 1988)

* * * * *

(g) * * *

(2) The basic pay of an individual who withdraws an election not to receive educational assistance under 38 U.S.C. ch. 30 as described in paragraph (c) of this section shall be reduced by

(i) $1,200, or

(ii) In the case of an individual whose discharge or release from active duty prevents the reduction of the individual's basic pay by $1,200, an amount less than $1,200.

(3) The basic pay of any individual who makes the election described in paragraph (e)(1) of this section and who does not withdraw that election will not be subject to the reduction described in either paragraph (g)(1) or paragraph (g)(2) of this section.

(4) If through administrative error or other reason the basic pay of an individual described in paragraph (a), (b), (c) or (d) of this section is not reduced as provided in paragraph (g) (1) or (2) of this section, the failure to make the reduction will have no effect on his or her eligibility, but may negate or reduce the entitlement to educational assistance under 38 U.S.C. ch. 30 determined as provided in § 21.7073 for an individual described in paragraph (c) of this section.

(Authority: 38 U.S.C. 1411, 1412, 1418; Pub. L. 98-525, Pub. L. 100-689) (Nov. 18, 1988)

6. In § 21.7044 paragraphs (a)(3), (a)(4), (b)(3) through (b)(9), the title of paragraph (c), paragraph (c)(1)(ii) through (iv), (c)(2) introductory text and (c)(2)(iii) are revised and paragraphs (b)(10) and (b)(11) are added to read as follows:

§ 21.7044 Persons with 38 U.S.C. chapter 34 eligibility.

(a) * * *

(3) The individual must either—

(i) Complete the requirements of a secondary school diploma or an equivalency certificate before January 1, 1990, or

(ii) Successfully complete the equivalent of 12 semester hours in a program leading to a standard college degree. This may be done at any time.

(4) After June 30, 1985—

(i) The individual must serve at least three years continuous active duty in the Armed Forces, or

(ii) The individual must be discharged or released from active duty—

(A) For a service-connected disability, or

(B) For a medical condition which preexisted the individual's service on active duty and which VA determines is not service connected, or

(C) Under 10 U.S.C. 1173 (Hardship discharge), or

(D) For the convenience of the Government provided the individual completes at least 30 months of active duty, or

(E) Involuntarily for convenience of the Government as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(Authority: 38 U.S.C. 1411(a)(1)(B))

* * * * *

(b) * * *

(3) The individual must either—

(i) Complete the requirements for a secondary school diploma (or an equivalency certificate) before completing the service requirements of this paragraph; or

(ii) Successfully complete the equivalent of 12 semester hours in a program of education leading to a standard college degree. This may be done at any time.

(4) The individual must have been on active duty on October 19, 1984, and have served without a break in service from October 19, 1984 through June 30, 1985.

(5) After June 30, 1985, the individual must—

(i) Except as provided in paragraph (b)(6) of this section, serve at least two years of continuous active duty in the Armed Forces characterized by the Secretary concerned as honorable service, and

(ii) Except as provided in paragraph (b)(7) of this section, after completion of this active duty service, the individual must serve at least four continuous years service in the Selected Reserve, during which the individual must participate satisfactorily in training as prescribed by the Secretary concerned.

(Authority: 38 U.S.C. 1412(b))

(6) The individual also must—

(i) Be discharged from service with an honorable discharge, or

(ii) Be placed on the retired list, or

(iii) Be transferred to the Standby Reserve or an element of the Ready Reserve other than the Selected Reserve after service in the Selected Reserve characterized by the Secretary concerned as honorable service, or

(iv) Continue on active duty, or

(v) Continue in the Selected Reserve.

(7) An individual is exempt from serving two years on active duty as provided in paragraph (b)(3) of this section when he or she is discharged or released during those two years—

(i) For a service-connected disability, or

(ii) For a medical condition which preexisted such service on active duty and which VA determines is not service-connected, or

(iii) Under 10 U.S.C. 1173 (hardship discharge), or

(iv) For convenience of the government provided the individual completes at least 20 months of active duty, or

(v) Involuntarily, for the convenience of the Government as a result of a reduction in force as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(8) An individual is exempt from serving four years in the Selected Reserve as provided in paragraph (b)(5) of this section when—

(i) After completion of the active duty required by this paragraph he or she serves a continuous period of service in the Selected Reserve, and

(A) Is discharged for a service-connected disability, or

(B) Is discharged for a medical condition which preexisted the individual's becoming a member of the Selected Reserve and which VA determines is not service connected, or

(C) Is discharged for hardship, or

(D) Is discharged or released after a minimum of 30 months service in the Selected Reserve for convenience of the Government, or

(E) Is discharged involuntarily for the convenience of the Government as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, or

(ii) The individual is obligated at the beginning of the two years active duty described in paragraph (b)(3) of this section to serve the four years in the Selected Reserve as described in paragraph (b)(5) of this section, and during the two years of active duty service he or she is discharged or released from active duty in the Armed Forces—

(A) For a service-connected disability, or

(B) For a medical condition which preexisted that period of active duty and which VA determines is not service connected.

(9) A veteran who has completed the active duty service required by this paragraph and has made a commitment (as determined by the Secretary concerned) to serve four continuous years in the Selected Reserve may pursue a program of education with basic educational assistance while performing the required Selected Reserve service.

(10) For the purpose of determining continuity of Selected Reserve service, the Secretary concerned may prescribe by regulation a maximum period of time during which the individual is considered to have continuous service in the Selected Reserve even through he or she—

(i) Is unable to locate a unit of the Selected Reserve of the individual's Armed Force that the individual is eligible to join or that has a vacancy, or

(ii) Is not attached to a unit of the Selected Reserve for any reason prescribed by the Secretary concerned by regulation other than those stated in subdivision (i) of this subparagraph.

(11) Any decision as to the continuity of an individual's service in the Selected Reserve made by the Department of Defense or the Department of Transportation under regulations described in paragraph (b) (9) or (10) of this section shall be binding upon VA.

(Authority: 38 U.S.C. 1411, 1412, 1416; Pub. L. 98-525, Pub. L. 100-689) (Jul. 1, 1985)

(c) *Eligibility to receive educational assistance while serving a qualifying period of active duty.*

(1) * * *

(ii) Completes the requirements of a secondary school diploma (or an equivalency certificate) before January 1, 1990, or successfully completes the equivalent of 12 semester hours in a program of education leading to a standard college degree.

(iii) Serves at least two years of continuous active duty in the Armed Forces; and

(iv) Remains on active duty.

(2) Subject to paragraph (c)(3) of this section, VA will consider an individual to have met the requirements of this section when he or she—

(Authority: 38 U.S.C. 1411, 1412, 1416; Pub. L. 100-689) (Nov. 18, 1988)

* * * * *

(iii) Has completed the requirements of a secondary school diploma (or equivalency certificate) or successfully completed the equivalent of 12 semester hours in a program of education leading to a standard college degree before beginning the training for which he or she wishes to receive educational assistance.

(Authority: 38 U.S.C. 1411, 1412, 1416; Pub. L. 100-689) (Nov. 18, 1988)

* * * * *

7. In § 21.7050 paragraph (a)(2) is revised to read as follows:

§ 21.7050 Ending dates of eligibility.

(a) * * *

(2) 10 years from the date on which the veteran meets the requirement for four years service in the Selected Reserve found in § 21.7042(b) and § 21.7044(b).

(Authority: 38 U.S.C. 1431(a); Pub. L. 98-525, Pub. L. 100-689) (Nov. 18, 1988)

* * * * *

8. In § 21.7051 paragraph (a)(2) is revised to read as follows:

§ 21.7051 Extended period of eligibility.

(a) * * *

(2) The veteran was prevented from initiating or completing the chosen program of education within the otherwise applicable eligibility period because of a physical or mental disability that did not result from the veteran's willful misconduct. VA will not consider the disabling effects of

chronic alcoholism to be the result of willful misconduct. (See § 21.7020(b)(38)) It must be clearly established by medical evidence that such a program of education was medically infeasible. VA will not consider a veteran who is disabled for a period of 30 days or less as having been prevented from initiating or completing a chosen program, unless the evidence establishes that the veteran was prevented from enrolling or reenrolling in the chosen program or was forced to discontinue attendance, because of the short disability.

(Authority: 38 U.S.C. 105, 1431(d); Pub. L. 98–525, Pub. L. 100–689) (Nov. 18, 1988)

* * * * *

9. In § 21.7072 introductory text is added and paragraphs (a), (b)(1), and (c)(1) introductory text are revised to read as follows:

§ 21.7072 Entitlement to basic educational assistance.

The provisions of this section apply to all veterans and servicemembers except to those to whom § 21.7073 applies.

(a) *Most individuals are entitled to 36 months of assistance.* Except as provided in paragraphs (b), (c) and (d) and in § 21.7073, a veteran or servicemember who is eligible for basic educational assistance is entitled to 36 months of basic educational assistance (or the equivalent thereof in part-time educational assistance).

(Authority: 38 U.S.C. 1413; Pub. L. 98–525) (Nov. 18, 1988).

(b) * * *

(1) Except as provided in § 21.7073, when the provisions of this subparagraph are met an eligible individual is entitled to one month of basic educational assistance (or equivalent thereof in part-time basic educational assistance) for each month of the individual's continuous active duty service which the individual serves after June 30, 1985, and, in the case of an individual who had no previous eligibility under 38 U.S.C. ch. 34, is part of the individual's initial obligated period of active duty. Except as provided in § 21.7073, VA will apply this subparagraph when the individual—

(i) Establishes eligibility through meeting the eligibility requirements of § 21.7042 or § 21.7044,

(ii) Serves less than 36 months of continuous active duty service after June 30, 1985, (or less than 24 continuous months of a qualifying obligated period of active duty service after June 30, 1985, if his or her initial obligated period of active duty is less than 3 years), and

(iii) Is discharged or released from active duty either—

(A) For a service-connected disability, or

(B) For a medical condition which preexisted the individual's service on active duty and which VA determines is not service connected,

(C) Under 10 U.S.C. 1173 (hardship discharge), or

(D) Involuntarily for the convenience of the Government as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(Authority: 38 U.S.C. 1413(a); Pub. L. 100–689) (Jul. 1, 1985) (Oct. 1, 1987).

* * * * *

(c) * * *

(1) Except as provided in § 21.7073, when the provisions of this subparagraph are met, an individual is entitled to one month of basic educational assistance (or the equivalent thereof in part-time basic educational assistance) for each month of the individual's active duty service after June 30, 1985, and in the case of an individual who had no previous eligibility under 38 U.S.C. ch. 34, is the individual's initial obligated period of active duty. An individual is entitled to one month of basic educational assistance (or the equivalent thereof in part-time basic educational assistance) for each four months served by the individual in the Selected Reserve after June 30, 1985, (other than a month in which the individual serves on active duty). VA will apply the provisions of this subparagraph when the individual—

* * * * *

(Authority: 38 U.S.C. 1413(b); Pub. L. 100–689), (Jul. 1, 1985).

* * * * *

10. Section 21.7073 is added to read as follows:

§ 21.7073 Entitlement for some individuals who establish eligibility during the open period.

(a) *Individuals to whom this section applies.* The provisions of this section apply to a veteran or servicemember who—

(1) Establishes eligibility by withdrawing an election not to enroll as provided in § 21.7042(c);

(2) Has less than $1,200 deducted from his or her military pay; and

(3) Before completing the period of service which the individual was obligated to serve on December 1, 1988, the individual—

(i) Is discharged or released from active duty for—

(A) A service-connected disability, or

(B) A medical condition which preexisted that service, or

(C) Hardship; or

(ii) Is discharged or released from active duty for the convenience of the Government after completing not less than 20 months of that period of service, if that period was less than three years, or 30 months, if that period was at least three years; or

(iii) Is involuntarily discharged or released from active duty for the convenience of the Government as a result of a reduction in force, as determined by the Secretary concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy

(Authority: 38 U.S.C. 1413(c); Pub. L. 100–689) (Nov. 18, 1988).

(b) *Entitlement.* A veteran described in paragraph (a) of this section is entitled to a number of months of basic educational assistance (or equivalent thereof in part-time basic educational assistance) equal to the lesser of—

(1) A number of months determined by multiplying 36 by a fraction the numerator of which is the amount by which the basic pay of the individual has been reduced as provided in § 21.7042(e)(2) and the denominator of which is $1,200, or

(2) The number of months the veteran has served on continuous active duty after June 30, 1985.

(Authority: 38 U.S.C. 1413(c); Pub. L. 100–689) (Nov. 18, 1988)

§ 21.7076 [Amended]

11. In § 21.7076(b)(1) remove the words "VA will make a charge against entitlement" and add, in their place, the words "Except for those pursuing correspondence training, cooperative training or apprenticeship or other on-job training, and those receiving tutorial assistance VA will make a charge against entitlement— (Nov. 18, 1988, Jan. 1, 1989)"

12. In § 21.7076 add paragraphs (d)(7) and (d)(8) to read as follows:

§ 21.7076 Entitlement charges.

* * * * *

(d) * * *

(7) When a veteran is pursuing a program of education through cooperative training, VA will make a charge against entitlement of 80 percent of a month for each month in which the veteran is receiving payment at the rate

for cooperative training. If the veteran is pursuing cooperative training for a portion of a month, VA will make a charge against entitlement on the basis of total elapsed time (80 percent of a day for each day of pursuit).

(Authority: 38 U.S.C. 1432(d); Pub. L. 100-689) (Jan. 1, 1989)

(8) If an individual is paid tutorial assistance as provided in § 21.7141, the following provisions will apply.

(i) There will be no charge to entitlement for the first $600 of tutorial assistance paid to an individual under 38 U.S.C. ch. 30.

(ii) VA will make a charge against the period of entitlement of one month for each amount of tutorial assistance paid under 38 U.S.C. ch. 30, to the individual in excess of $600 that is equal to the amount of monthly educational assistance the individual is otherwise eligible to receive for full-time pursuit of a residence course as provided in §§ 21.7136, 21.7137 and 21.7136, as appropriate. When the amount of tutorial assistance paid to the individual in excess of $600 is less than the amount of monthly educational assistance the individual is otherwise eligible to receive, the entitlement charge will be prorated.

(Authority: 38 U.S.C. 1419; Pub. L. 100-689) (Nov. 18, 1988)

13. In § 21.7110 paragraph (a) is revised to read as follows:

§ 21.7110 Selection of a program of education.

(a) *General requirement.* In order to receive educational assistance an individual must either be pursuing an approved program of education or be pursuing refresher or deficiency courses, or other preparatory or special education or training courses necessary to enable the individual to pursue an approved program of education.

(Authority: 38 U.S.C. 1414, 1423, 1434; Pub. L. 98-525, Pub. L. 100-689) (Aug. 15, 1989)

* * * * *

14. In § 21.7122 paragraphs (b) and (e)(5) are revised to read as follows:

§ 21.7122 Courses precluded.

* * * * *

(b) *Courses outside a program of education.* VA will not pay educational assistance for an enrollment in any course which is not part of a veteran's or servicemember's program of education unless the veteran or servicemember is enrolled in refresher courses (including courses which will permit the veteran or servicemember to update knowledge and skills or be instructed in the technological advances which have occurred in the veteran's or servicemember's field of employment), deficiency courses, or other preparatory or special education or training courses necessary to enable the veteran or servicemember to pursue an approved program of education.

(Authority: 38 U.S.C. 1402(3), 1434, 1652(b); Pub. L. 98-525) (Aug. 15, 1989)

* * * * *

(e) * * *

(5) Except as provided in § 21.4252(j), a course from which the veteran or servicemember withdrew without mitigating circumstances, or

(Authority: 38 U.S.C. 1780(a)(4); Pub. L. 100-689) (Jun. 1, 1989)

* * * * *

15. In § 21.7136 paragraphs (a)(3), (b)(3) and (d)(3) are added and paragraph (c)(1) introductory text is revised to read as follows:

§ 21.7136 Rates of payment of basic educational assistance.

(a) * * *

(3) Except as otherwise provided in this section, the monthly rate of basic educational assistance payable to a veteran who is pursuing a cooperative course in $240.

(Authority: 38 U.S.C. 1432(d); Pub. L. 100-689) (Jan. 1, 1989)

* * * * *

(b) * * *

(3) Except as otherwise provided in this section, the monthly rate of basic educational assistance payable is $200 when—

(i) The veteran's initial obligated period of active duty is less than three years,

(ii) The veteran has not served and is not committed to serve in the Selected Reserve for a perioid of four years, and

(iii) The veteran is pursuing a cooperative course.

(Authority 38 U.S.C. 1432(d); Pub. L. 100-689) (Jan. 1, 1989)

* * * * *

(c) * * *

(1) For individuals other than those pursuing cooperative training, or apprenticeship or other on-job training it may not exceed—

* * * * *

(d) * * *

(3) For individuals pursuing cooperative training, it may not exceed $320 per month.

(Authority: 38 U.S.C. 1432(d))

16. In § 21.7137 paragraphs (a)(1), (d)(1) and (d)(3) are revised to read as follows:

§ 21.7137 Rates of payment of basic educational assistance for individuals with remaining entitlement under 38 U.S.C. chapter 34.

(a) *Minimum rates.* (1) Except as otherwise provided in this section, the monthly rate of basic educational assistance will be the rate taken from the following table.

Training	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
Full time	$488.00	$524.00	$555.000	$16.00.
¾ time	366.50	393.000	416.000	12.00.
½ time	244.00	262.000	277.50	8.50.
Less than ½ but more than ¼ time.	244.00	See paragraph (b)		
¼ time or less	122.00	See paragraph (b)		
Cooperative	361.60	382.00	401.60	9.20.

(Authority: 38 U.S.C. 1415(c), 1432(d); Pub. L. 98-525, Pub. L. 100-689) (Jan. 1, 1989)

* * * * *

(d) * * *

(1) For individuals other than those pursuing cooperative training, and apprenticeship or other on-job training it may not exceed—

* * * * *

(3) For individuals pursuing cooperative training, it may not exceed $320 per month.

(Authority: 38 U.S.C. 1432(d)) (Jan. 1, 1989)

* * * * *

17. In § 21.7138 paragraphs (a)(1) and (b)(1) are revised and paragraph (b)(3) is added to read as follows:

§ 21.7138 Rates of supplemental educational assistance.

(a) *Rates for veterans.* (1) Except for a veteran pursuing apprenticeship or other on-job training, the rate of supplemental educational assistance payable to a veteran is at least the rate stated in this table.

Training	Monthly Rate
Full time	$300.
¾ time	225.
½ time	150.
Less than ½ but more than ¼ time.	150 See paragraph (c).
¼ time or less	75 See paragraph (c).
Cooperative	240.

(Authority: 38 U.S.C. 1415(d), 1422, 1432(d); Pub. L. 98–525, Pub. L. 100–689) (Jan. 1, 1989)

* * * * *

(b) *Increase in supplemental educational assistance rates (Kicker).* (1) For an individual other than one pursuing an apprenticeship or other on-job training or cooperative training it may not exceed—

(Authority: 38 U.S.C. 1432(d)) (Jan. 1, 1989)

* * * * *

(3) For an individual pursuing cooperative training, it may not exceed $240 per month.

(Authority: 38 U.S.C. 1422(b), 1432(d)) (Jan. 1, 1989)

* * * * *

18. In § 21.7140 paragraph (g) is added to read as follows:

§ 21.7140 Certifications and release of payments.

* * * * *

(g) *Payments of accrued benefits.* Educational assistance remaining due and unpaid at the date of the servicemember's or veteran's death is payable under the provisions of § 3.1000 of this chapter.

(Authority: 38 U.S.C. 1417(b); Pub. L. 100–689) (Jul. 1, 1985).

19. Section 21.7141 is added to read as follows:

§ 21.7141 Tutorial assistance.

(a) *Entitlement to tutorial assistance.* (1) An individual who is otherwise eligible to receive benefits under the Montgomery GI Bill—Active Duty may receive supplemental monetary assistance to provide tutorial services if he or she—

(i) Is pursuing a post-secondary educational program on a half-time or greater basis at an educational institution, and

(ii) Has a deficiency in a subject which is indispensable to the satisfactory pursuit of an approved program of education.

(2) This supplemental monetary assistance shall be termed tutorial assistance.

(Authority: 38 U.S.C. 1419, 1692; Pub. L. 100–689) (Nov. 18, 1988).

(b) *Application for tutorial assistance.* The application for tutorial assistance shall be in the form prescribed by the Secretary and shall contain such information as the Secretary may require.

(Authority: 38 U.S.C. 1419, 3001; Pub. L. 100–689) (Nov. 18, 1988).

(c) *Approval of tutorial assistance.* The Department of Veterans Affairs will approve an application for tutorial assistance when—

(1) The educational institution where the individual is pursuing a program of education certifies that—

(i) Individualized tutorial assistance is essential to correct a deficiency in a specified subject or subjects required as a part of, or which is prerequisite to, or which is indispensable to the satisfactory pursuit of an approved program of education;

(ii) The tutor selected—

(A) Is qualified, and

(B) Is not the parent, spouse, child, brother or sister of the individual; and

(iii) The charges for this assistance do not exceed the customary charges for such tutorial assistance; and

(2) The assistance is furnished on an individual basis.

(Authority: 38 U.S.C. 1419; 1692; Pub. L. 100–689) (Nov. 18, 1988).

(d) *Limitations on tutorial assistance.* (1) The Department of Veterans Affairs will authorize tutorial assistance in an amount not to exceed $100 per month.

(2) Tutorial assistance provided under this section will not exceed a maximum of $1,200.

(Authority: 38 U.S.C. 1419, 1692; Pub. L. 100–689) (Nov. 18, 1988).

20. In § 21.7220 paragraph (b)(9) is revised to read as follows:

§ 21.7220 Course approval.

* * * * *

(9) Section 21.4265—Practical training approved as institutional training, (Jan. 1, 1989).

* * * * *

21. In § 21.7222 paragraphs (f) and (g) are removed, paragraphs (h) and (i) are redesignated (f) and (g) and paragraphs (d) and (e) are revised to read as follows:

§ 21.7222 Courses and enrollments which may not be approved.

* * * * *

(d) A course, or a combination of courses consisting of institutional agricultural courses and concurrent agricultural employment commonly called a farm cooperative course; or

(e) An independent study course which does not lead to a standard college degree.

(Authority: 38 U.S.C. 1434, 1673; Pub. L. 98–525, Pub. L. 99–576, Pub. L. 100–689) (Jan. 1, 1989, Aug. 15, 1989)

* * * * *

22. Paragraph 21.7280 is added to read as follows:

§ 21.7280 Death benefit.

(a) *Overview.* VA will pay a death benefit under 38 U.S.C. ch. 30 when an individual's death meets the criteria of this section; the individual is survived by someone described in this section; and the amount of educational assistance paid or payable to the individual is less than the amount reduced from the individual's basic pay.

(Authority: 38 U.S.C. 1417; Pub. L. 100–689) (Jul. 1, 1985)

(b) *Necessary criteria for death benefit.* VA may pay a death benefit under 38 U.S.C. ch. 30 only if—

(1) The individual dies while on active duty,

(2) The death of the individual is service connected. In determining if the death is service connected, VA will apply the provisions of § 3.312 of this chapter; and

(3) Either—

(i) At the time of the individual's death he or she is entitled to basic educational assistance through having met the eligibility requirements of § 21.7042, or

(ii) At the time of the individual's death he or she is on active duty with the Armed Forces and but for the minimum service requirements of § 21.7042(a)(2) of § 21.7042(b) (3) or (4) would be entitled to basic educational assistance through having met the eligibility requirements of § 21.7042.

(Authority: 38 U.S.C. 1417(a); Pub. L. 100–689) (Jul. 1, 1985)

(c) *Payee.* (1) VA shall pay a death benefit to the living person or persons in the order listed in this paragraph.

(i) The beneficiary or beneficiaries designated by the individual under the individual's Servicemen's Group Life Insurance Policy,

(ii) The surviving spouse of the individual,

(iii) The surviving child or children of the individual, in equal shares,

(iv) The surviving parent or parents of the individual in equal shares.

(2) If none of the persons listed in this paragraph is living, VA shall not pay a death benefit under this section.

(Authority: 38 U.S.C. 1417(a)(2); Pub. L. 100-689) (Jul. 1, 1985)

(d) *Amount of death benefit.* (1) The amount of any payment made under this section shall be equal to—

(i) The amount reduced from the individual's basic pay as provided in § 21.7042(f) less—

(ii) The total of—

(A) The amount of educational assistance that has been paid to the individual under 38 U.S.C. ch. 30, and

(B) The amount of accrued benefits paid or payable with respect to the individual.

(2) VA shall pay no death benefit when the amount determined by subparagraph (1) of this paragraph is zero or less than zero.

(Authority: 38 U.S.C. 1417 (b) and (c); Pub. L. 100-689) (Jul. 1, 1985)

[FR Doc. 91-10035 Filed 5-1-91; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3924-9]

Approval and Promulgation of Implementation Plans States of Arkansas, Louisiana, and New Mexico; Revisions to the States' Prevention of Significant Deterioration Rules for Nitrogen Dioxide Increment Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: This **Federal Register** notice approves several revisions to the State Implementation Plans (SIP) submitted by the States of Arkansas, Louisiana, and New Mexico for incorporating the nitrogen dioxide (NO_2) increment standards. These revisions are in response to the requirements of the Prevention of Significant Deterioration (PSD) rules for NO_2 increment standards that were promulgated by the EPA in the **Federal Register** notice of October 17, 1988 (53 FR 40656).

Today's notice is published to advise the public that EPA is approving the Arkansas, Louisiana, and New Mexico SIP revisions for the PSD nitrogen dioxide increment standards. The rationale for this approval is contained in this notice.

DATES: This action will be effective on July 1, 1991, unless notice is received within 30 days that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Copies of the States' submittals and other information are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least twenty-four hours before the visiting day.

For all three States: Planning Section, Air Programs Branch, Air, Pesticides, and Toxics Division, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, telephone: (214) 655-7214.

For Arkansas: Division of Air Pollution Control, Arkansas Department of Pollution Control and Ecology, 8001 National Drive, Little Rock, Arkansas 72209, telephone: (501) 562-7444.

For Louisiana: Air Quality Division, Louisiana Department of Environmental Quality, 625 North 4th Avenue, Baton Rouge, Louisiana 70804, telephone: (504) 342-1206.

For New Mexico: Air Quality Bureau, New Mexico Environmental Improvement Division, 1190 St. Francis Drive, Santa Fe, New Mexico 87503, Telephone: (505) 827-0042.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P.E.; Planning Section, Air Programs Branch, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, telephone: (214) 655-7214.

SUPPLEMENTARY INFORMATION:

Background

The EPA promulgated the nitrogen dioxide increments in the **Federal Register** notice of October 17, 1988. The increment standards were promulgated for class I, II, and III as 2.5, 25.0 and 50.0 $\mu g/m^3$ (based on annual averaging time), respectively. The PSD increments for nitrogen dioxide were developed pursuant to the provision of section 166 of the Act. Specifically, this section requires the adoption of PSD regulations for nitrogen oxides [as well as for other pollutants] to provide "numerical measures against which permit applications may be evaluated, a framework for stimulating improved control technology, [and] protection of air quality values." Further, section 166 requires that the regulation include "specific measures at least as effective as" the existing increments established by Congress in section 163 of the Act for particulate matter and sulfur dioxide in meeting the goals and purposes of the PSD program.

The section 166 regulations for nitrogen oxides promulgated are based on an ambient increment requirement for nitrogen dioxide as the numerical measure of significant deterioration in air quality. The nitrogen dioxide increments follow the pattern enacted by Congress for the particulate matter and sulfur dioxide increments. These increments establish maximum increases in ambient air concentrations of nitrogen dioxide (expressed in micrograms per cubic meter ($\mu g/m^3$)) allowed in a PSD area over a baseline concentration. These increments are applicable to both stationary and mobile sources, and are implemented through a series of permit review requirements that are already in place for major new stationary sources or major modifications, as defined in 40 CFR parts 51 and 52. The States are required to adopt these rules and submit a SIP revision to the EPA for approval.

Evaluation of States Submissions

The PSD NO_2 SIP submittals for states of Arkansas, Louisiana, and New Mexico are discussed individually and have been reviewed for their adequacy and consistency with the requirements of Federal regulations (40 CFR 51, § 51.166).

Arkansas

The State of Arkansas has an existing approved SIP for implementing and enforcing the PSD program in the State (except for Indian lands). The EPA initially approved the State PSD SIP on February 16, 1982. The Arkansas Department of Air Pollution Control and Ecology (the agency responsible for air quality planning and control) adopted the Federal PSD regulations (40 CFR 52.21) by incorporation by reference. The last PSD SIP revision (54 FR 18494) contained the provisions for particulate matter (PM_{10}).

The State has revised its PSD SIP to incorporate the requirements and revisions which were promulgated by the EPA on October 17, 1988, for the PSD NO_2 increment standards. The Arkansas Department of Air Pollution Control and Ecology has effectuated the Federal NO_2 increment standards in its SIP by adopting the Federal regulations (40 CFR

52.21), as in effect on June 28, 1989, by reference. By revising the PSD SIP adoption date, the State will have authority to implement and enforce all of the Federal PSD rules, including the PSD NO_2 increments, in the State as in effect through June 28, 1989.

The Arkansas Commission on Pollution Control and Ecology adopted the PSD NO_2 SIP revision on May 25, 1990, and the Governor submitted this revision to the EPA on June 19, 1990. The State has conducted appropriate public participation in accordance with the requirements of 40 CFR 51.102, and received no comment from the public. Based on evaluation of the documents submitted by the Governor, EPA has determined that the State of Arkansas has appropriately incorporated the PSD NO_2 rules into the State regulations and has authority to implement the PSD program as well as issuance and enforcement of the PSD permits in Arkansas.

Louisiana

The State of Louisiana has an existing approved SIP for implementing and enforcing the PSD program in the State (except for Indian lands). The EPA initially approved the State PSD SIP on April 24, 1987. This approval was based on review of a set of State generated regulations (LAC 33:Part III. Chapter 5. Permit Procedures; § 509. Prevention of Significant Deterioration) which EPA determined to be equivalent to the Federal PSD regulations in 40 CFR 52.21 and consistent with the requirements of 40 CFR 51.166. The last PSD SIP revision (54 FR 25449) contained the provisions for particulate matter (PM_{10}).

In response to the requirements of the PSD NO_2 increment rules (53 FR 40656), the State has revised the affected sections of its PSD SIP to incorporate the provisions of the NO_2 increments promulgated by the EPA on October 17, 1988. The affected sections of the State regulations (Federal regulations are given in the bracket for reference) are: Section 509(B) (Baseline Area) (40 CFR 51.166(b)(15)(i)), section 509(B)(Baseline Concentration (40 CFR 51.166(b)(13)), section 509(B)(Baseline Date) (40 CFR 51.166(b)(14)), section 509(B)(Net Emission Increases) (40 CFR 51.166(b)(3)(iv)), section 509(B) (Ambient Air Increment) (40 CFR 51.166(c)), and section 509(P)(4) (40 CFR 51.166 (p)(4)). The State has revised these sections to incorporate the requirements of Federal PSD NO_2 provisions into the State regulations.

The Secretary of Louisiana Department of Environmental Quality (LDEQ) amended and approved the foregoing revisions to LAC 33.III. 509 on July 20, 1990. The Governor of Louisiana submitted this SIP revision to the EPA on October 26, 1990, for approval. The State has conducted appropriate public participation in accordance with the requirements of 40 CFR 52.102, and the LDEQ received two oral and no written comments. The comments were non-controversial and the LDEQ responded to these adequately. Based on the documents submitted by the Governor and review of the State regulations, EPA has determined that the State of Louisiana has appropriately revised the State PSD regulations for incorporating the Federal NO_2 increment provisions.

New Mexico

The State of New Mexico has an existing approved SIP for implementing and enforcing the PSD program in the State (except for Bernalillo County and Indiana lands). The EPA initially approved the New Mexico PSD SIP on February 27, 1987. This approval was based on review of a set of State generated regulations (New Mexico Air Quality Control Regulation (AQCR) 707—Permits, Prevention of Significant Deterioration (PSD)) which EPA determined to be equivalent to the Federal PSD regulations in 40 CFR 52.21 and consistent with the requirements of 40 CFR 51.166. The last PSD SIP revision (55 FR 34013) contained the provisions for particulate matter (PM_{10}).

In response to the requirements of the PSD NO_2 increment rules (53 FR 40656), the State has revised the affected sections of its PSD regulations to incorporate the provisions of the NO_2 increments promulgated by the EPA on October 17, 1988. The affected sections of the State regulations (Federal regulations are given in the bracket for reference) are: AQCR 707(O)(4)(5) and Table 5 (40 CFR 51.166(p)(4)), AQCR 707(P)(8)(40 CFR 51.166(b)(15)(i)), AQCR 707(P)(8)(40 CFR 51.166(b)(13)), AQCR 707(P)(25)(40 CFR 51.166(6)(14)), AQCR 707(P)(28)(40 CFR 51.166(b)(14)), AQCR 707(P)(31)(40 CFR 51.166(b)(3)(iv), AQCR 707 Table 4. Allowable PSD Increment (40 CFR 51.166(c)), AQCR 707(P)(21)(40 CFR 51.166(b)(28)), and AQCR 707(P)(26)(e)(40 CFR 51.166(b)(1)(iii)). The last two sections listed above were revised to clarity and enhance the State regulations, and they are not subject to the PSD NO_2 requirements, however, they are consistent with 40 CFR 51.166.

The New Mexico Environmental Improvement Board adopted the revisions cited in this notice on March 9, 1990. The PSD regulation was filed with the State Records Center on May 29, 1990, and became effective on June 28, 1990. The Governor of New Mexico submitted this SIP revision to the EPA on July 16, 1990, for approval. The State has conducted appropriate public participation in accordance with the requirements of 40 CFR 51.102, and the State received two public comments. Based on the documents submitted by the Governor and review of the State regulations, EPA has determined that the State of New Mexico has appropriately revised and adopted the State PSD regulations for incorporating the Federal NO_2 increment provisions.

Final Action

The EPA has reviewed the PSD NO_2 SIP revision submittals from the States of Arkansas, Louisiana, and New Mexico, and determined that these States have adequately revised their existing PSD SIPs to incorporate the provisions of the NO_2 increments promulgated by the EPA on October 17, 1988 (53 FR 40656). The revised State regulations are: (1) Prevention of Significant Deterioration Supplement—Arkansas Plan of Implementation for Air Pollution Control for the State of Arkansas; (2) LAC 33: Part III. Chapter 5. Permit Procedures section 509. Prevention of Significant Deterioration for the State of Louisiana; and (3) New Mexico AQCR 707—Permits, Prevention of Significant Deterioration for the State of New Mexico. In addition, each State has conducted appropriate public participation in accordance with the requirements of 40 CFR 51.102. Therefore, the EPA is approving the revised States' PSD regulations as cited above for the States of Arkansas, Louisiana, and New Mexico. The actions approved in this notice are applicable to the entire States of Arkansas and Louisiana outside the boundaries of Indian lands. In the State of New Mexico, the approved action is applicable to the entire State outside the boundaries of Indian lands and Bernalillo County. At present, Bernalillo County does not have an approved PSD SIP and the Federal implementation plan is applicable in this area. The applications and inquiries concerning permits and PSD program, outside of Indian lands and Bernalillo County (New Mexico), should be directed to each State at the addresses listed earlier in this notice. The application and questions concerning Indian lands and Bernalillo County (New Mexico) should be directly addressed to the EPA Region 6 Air Programs Branch at the address given in this notice.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective

60 days from the date of publication unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on July 1, 1991.

The EPA has reviewed these requests for revision of the federally approved State Implementation Plans for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirement.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989, (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Tables 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 until April 1991.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 1, 1991. Filing a petition for reconsideration by the Administrator for this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on substantial number of small entities (See 46 FR 8709).

Incorporation by reference of the Arkansas, Louisiana, and New Mexico Implementation Plans were approved by the Director of the Federal Register on July 1, 1982.

This rulemaking is issued under the authority of section 110 of the Clean Air Act, 42 U.S.C. 7410.

List of Subjects in 40 CFR Part 52

Air Pollution Control, Nitrogen Oxides, and Nitrogen Dioxide.

Dated: April 12, 1991.

Joe D. Winkle,

Acting Regional Administrator.

PART 52—[AMENDED]

Title 40 part 52 of the code of Federal Regulations is amended as follows:

1. The authority citation for part 52 continues to read as follows:

Authority: U.S.C. 7401–7642.

Subpart E—Arkansas

2. Section 52.170 is amended by adding paragraph (c)(28) to read as follows:

§ 52.170 Identification of plan.

* * * * *

(c) * * *

(28) Revisions to the Arkansas State Implementation Plan for Prevention of Significant Deterioration (PSD) of Air Quality Supplement Arkansas Plan of Implementation for Air Pollution Control (PSD nitrogen dioxide increments), as adopted on May 25, 1990, by the Arkansas Commission on Pollution Control and Ecology, were submitted by the Governor on June 19, 1990.

(i) Incorporation by reference.

(A) Prevention of Significant Deterioration Supplement Arkansas Plan of Implementation For Air Pollution Control as amended on May 25, 1990.

(ii) Additional Material—None.

3. Section 52.181 is revised to read as follows:

§ 52.181 Significant deterioration of air quality.

(a) The plan submitted by the Governor of Arkansas on April 23, 1981 [as adopted by the Arkansas Commission on Pollution Control and Ecology (ACPCE) on April 10, 1981], June 3, 1988 (as revised and adopted by the ACPCE on March 25, 1988), and June 19, 1990 (as revised and adopted by the ACPCE on May 25, 1990), Prevention of Significant Deterioration (PSD) Supplement Arkansas Plan of Implementation For Air Pollution Control, is approved as meeting the requirements of Part C, Clean Air Act for preventing significant deterioration of air quality.

(b) The requirements of sections 160 through 165 of the Clean Air Act are not met for Federally designed Indian lands. Therefore, the provisions of § 52.21 (b) through (w) are hereby incorporated by reference and made a part of the applicable implementation plan and are applicable to sources located on land under the control of Indian governing bodies.

Subpart T—Louisiana

4. Section 52.970 is amended by adding paragraph (c)(57) to read as follows:

§ 52.970 Identification of plan.

* * * * *

(c) * * *

(57) Revisions to the Louisiana State Implementation Plan for LAC:33:III: Section 509 Prevention of Significant Deterioration (PSD) sections (509)(B) (Baseline Area) (1), 509(B) (Baseline Area) (2), 509(B) (Baseline Concentration) (1), (509)(B) (Baseline Concentration) (1)(b), 509(B) (Baseline Concentration) (2)(a), 509(B) (Baseline Concentration) (2)(b), 509(B) (Baseline Date) (1)(a), 509(B) (Baseline Date) (1)(b), 509(B) (Baseline Date) (2), 509(B) (Baseline Date) (2)(a), 509(B) (Baseline Date) (2)(b), 509(B) (Net Emission Increases) (4), 509(D), and 509(P)(4), as adopted by the Secretary of Louisiana Department of Environmental Quality (LDEQ) on July 20, 1990, were submitted by the Governor on October 26, 1990.

(i) Incorporation by reference.

(A) LAG:33:III: Section 509 Prevention of Significant Deterioration Sections (509)(B) (Baseline Area) (1), 509(B) (Baseline Area) (2), 509(B) (Baseline Concentration) (1)(a), (509)(B) (Baseline Concentration) (1)(b), 509(B) (Baseline Concentration) (2)(a), 509(B) (Baseline Concentration) (2)(b), 509(B) (Baseline Date (1)(a), 509(B) (Baseline Date) (1)(b), 509(B) (Baseline Date) (2), 509(B) (Baseline Date) (2)(a), 509(B) (Baseline Date) (2)(b), 509(B) (Net Emission Increase) (4), 509(D), and 509(P)(4) as amended on July 20, 1990.

(ii) Additional Material—None.

5. Section 52.986 is revised to read as follows:

§ 52.986 Significant deterioration of air quality.

(a) The plan submitted by the Governor of Louisiana on August 14, 1984 (as adopted by the Secretary of Louisiana Department of Environmental Quality (LDEQ) on May 23, 1985), July 26, 1988 (as revised and adopted by the LDEQ on May 5, 1988), and October 26, 1990 (as revised and adopted by the LDEQ on July 20, 1990), LAC:33:III: § 509 Prevention of Significant Deterioration (PSD) and its Supplement documents, is approved as meeting the requirements of Part C, Clean Air Act for preventing significant deterioration of air quality.

(b) The requirements of Section 160 through 165 of the Clean Air Act are not met for Federally designated Indian lands since the plan (specifically LAC:33:III:509.A.1) excludes all Federally recognized Indian lands from the provisions of this regulation. Therefore, the provisions of § 52.21 (b) through (w) are hereby incorporated by reference and made a part of the applicable implementation plan, and are applicable to sources located on land under the control of Indian governing bodies.

Subpart GG—New Mexico

6. Section 52.1620 is amended by adding paragraph (c)(46) to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

(46) Revisions to the New Mexico State Implementation Plan for Air Quality Control Regulation (AQCR) 707—Permits, Prevention of Significant Deterioration (PSD) (for PSD nitrogen dioxide increments) Sections O(4), P(7) through P(41), Table 4, and Table 5, as adopted by the New Mexico Environmental Improvement Board (NMEIB) on March 9, 1990, and filed with State Records Center on May 29, 1990, were submitted by the Governor on July 16, 1990.

(i) Incorporation by reference.

(A) AQCR 707—Permits, Prevention of Significant Deterioration (PSD) sections O(4), P(7) through P(41), Table 4, and Table 5, as filed with State Records Center on May 29, 1990.

(ii) Additional Material—None.

7. Section 52.1634 is revised to read as follows:

§ 52.1634 Significant deterioration of air quality.

(a) The plan submitted by the Governor of New Mexico on February 21, 1984 (as adopted by the New Mexico Environmental Improvement Board (NMEIB) on January 13, 1984), August 19, 1988 (as revised and adopted by the NMEIB on July 8, 1988), and July 16, 1990 (as revised and adopted by the NMEID on March 9, 1990), Air Quality Control Regulation 707—Permits, Prevention of Significant Deterioration (PSD) and its Supplemental document, is approved as meeting the requirements of part C, Clean Air Act for preventing significant deterioration of air quality.

(b) The requirements of section 160 through 165 of the Clean Air Act are not met for Federally designated Indian lands. Therefore, the provisions of § 52.21 (b) through (w) are hereby incorporated by reference and made a part of the applicable implementation plan, and are applicable to sources located on land under the control of Indian governing bodies.

(c) The plan submitted by the Governor in (a) for Prevention of Significant Deterioration is not applicable to Bernalillo County. Therefore, the provisions of § 52.21 (b) through (w) are hereby incorporated by reference and made a part of the applicable implementation plan and are applicable to sources located within the boundaries of Bernalillo County (including the City of Albuquerque).

[FR Doc. 91-10271 Filed 5-1-91; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 52

Approval and Promulgation of Implementation Plans North Carolina; Forsyth County, Western North Carolina, and Mecklenburg County Regulations

[NC-045; FRL-3917-6]

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The State of North Carolina has four federally-funded air pollution control agencies. One of these is a State agency and the other three are local programs which operate in major metropolitan areas of the State. All four agencies have been authorized by the North Carolina Environmental Management Commission (EMC) to run independent and comprehensive air pollution programs in their respective jurisdictions. Each local agency is responsible for adopting and enforcing its own regulations, as well as, for issuing source permits. The regulations adopted by the local programs are required (by State law) to be comparable and consistent with those adopted by the State agency. To date, EPA has approved only the State's version of the North Carolina air quality regulations. Since EPA requires local programs implementing a SIP to have the legal authority to do so, and since the local programs can only enforce the rules they adopt, the State submitted the local programs' rules to EPA for approval as part of the SIP on July 14, 1990 . Today's action in no way negates any SIP calls or overrides any SIP deficiencies.

DATES: This action will be effective July 1, 1991 unless notice is recieved within 30 days that adverse or critical comments will be submitted. If the effective date is delayed timely notice will be published in the **Federal Register.**

ADDRESSES: Comments may be submitted to Rosalyn D. Hughes at the EPA Regional Office address listed below. Copies of the documents relevant to this action are available for public inspection at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365

Air Quality Section, Division of Environmental Management, North Carolina Department of Natural Resources and Community Development, Archdale Building, 512 North Salisbury Street, Raleigh, North Carolina 27611

Forsyth County Environmental Affairs Department, 537 North Spruce Street, Winston-Salem, North Carolina 27101

Mecklenburg County Department of Environmental Protection, 1200 Blythe Boulevard, Charlotte, North Carolina 28203

Western North Carolina Regional Air Pollution, Control Agency, Buncombe County Courthouse, Asheville, North Carolina 28801-3569

Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Rosalyn D. Hughes of the EPA Region IV Air Programs Branch at the above address and telephone (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: The State of North Carolina has four federally-funded air pollution control agencies. One of these is a State agency and the other three are local programs which operate in major metropolitan areas of the State. All four agencies have been authorized by the North Carolina Environmental Management Commission (EMC) to run independent and comprehensive air pollution programs in their respective jurisdiction. Each local agency is responsible for adopting and enforcing its own regulations, as well as for issuing source permits. The regulations adopted by the local programs are required (by State law) to be comparable and consistent with those adopted by the State agency. To date, EPA has approved only the State's version of the North Carolina air quality regulations. Since EPA requires local programs implementing a SIP to have the legal authority to do so, and since the local programs can only enforce the rules they adopt, the State submitted the local programs' rules to EPA for approval as part of the SIP. Deficiencies in the North Carolina

regulations that are in the local regulations must be addressed at another time.

On June 14, 1990, the North Carolina Environmental Managment Commission (EMC) submitted regulations for Forsyth County, Mecklenburg County, and Western North Carolina as part of the North Carolina SIP to EPA for review and approval. EPA found the Forsyth County rules and regulations to be equivalent to but not less stringent than the federally approved title 15 of the North Carolina Administrative Code (State regulations for North Carolina).

The rules and regulations are being approved so that they become federally-enforceable and now are incorporated into the State Implementation Plan for the State of North Carolina. Forsyth County will follow the air quality control strategy contained in the existing North Carolina SIP. This strategy has been successful in Forsyth County as that area of the State (Winston-Salem) is classified as attainment for all National Ambient Air Quality Standards (NAAQS). However, on November 7, 1989, the Winston-Salem area received an ozone SIP call.

The Western North Carolina portion of the SIP contains regulations which apply to sources in Buncombe and Haywood Counties (Asheville). All of the rules are consistent with the federally-approved SIP for the State of North Carolina and the requirements of the Clean Air Act, except for Rule 1–139, Utility Boilers. EPA disapproved the comparable State regulation that dealt with utility boilers in Buncombe and Haywood Counties on June 16, 1988 (53 FR 22485); therefore, the Western North Carolina Rule 1–139 is not approvable. Western North Carolina is also relying on the State's existing air quality control strategy. This is acceptable because Buncombe and Haywood counties are currently attaining all NAAQS.

The Mecklenburg County rules and regulations are consistent with the federally-approved SIP for the State of North Carolina (Title 15 North Carolina Administrative Code) and the Clean Air Act. Mecklenburg County is, like the other agencies in North Carolina, relying on the State's existing air quality control strategy. This is acceptable because Mecklenburg County is currently attainment for all the NAAQS, except ozone. A SIP call which addressed ozone nonattaiment was issued in May 1988.

Several of the local programs' regulations require additional explanation. Each agency has a regulation entitled, Sulfur Dioxide Emissions From Fuel Burning Installations. This regulation is equivalent to the federally approved State regulations, but it does not apply to all the sources in the local programs' jurisdiction. Three sources, R.J. Reynolds-Whitaker Park in Forsyth County and BASF (formerly American Enka) and Dayco Southern in Western North Carolina, are not affected by this regulation. Those sources were on a list of sources (47 FR 54934) which were required to remain at 1.6 lb SO_2/million BTU (mmBTU) unless they could demonstrate that the (NAAQS) would be protected at the higher limit (2.3 lb SO_2/mmBTU). The regulation, Sulfur Dioxide Emissions From Fuel Burning Installations, is approvable for all SO_2 sources in Mecklenburg County, Forsyth County, and Western North Carolina, except R.J. Reynolds-Whitaker Park, BASF (formerly American Enka), and Dayco Southern. R.J. Reynolds-Whitaker Park, BASF (formerly American Enka), and Dayco Southern will be subject to the 1.6 lb SO_2/mmBTU limit previously approved in the SIP.

Each agency has regulations entitled New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants. These regulations are technology and health/risk based standards, respectively, rather than emission limits relied upon to attain and maintain the NAAQS which are promulgated under sections 111 and 112 of the Clean Air Act. Since these regulations are not required under section 110 of the Clean Air Act, State Implementation Plans, EPA will not take action on Forsyth County regulations 3–158 and 3–159, Western North Carolina regulations 1–158 and 1–159, and Mecklenburg County regulations 2.0524 and 2.0525.

The local agencies have adopted regulations which were not required under section 110 of the Clean Air Act, but under section 111(d). The local agencies do not have any sources in their jurisdiction to which these regulations apply. Therefore, no action will be taken on the following regulations:

Emissions From Plants Producing Sulfuric Acid

Forsyth County Regulation 3–152(2)
Western North Carolina Regulation 1–152(2)

Total Reduced Sulfur From Kraft Pulp Mills

Forsyth County Regulation 3–155
Mecklenburg County Regulation 2.0528

Particulate Matter and Reduced Sulfur Emission From Pulp and Paper Mills

Western North Carolina 1–144

Fluoride Emissions From Primary Aluminum Reduction Plants

Forsyth County Regulation 3–160
Mecklenburg County Regulation 2.0529

Also, EPA will not take any action on the following regulations because they are not federally approved for the State:

Control of Mercury Emissions

Forsyth County Regulation 3–169
Mecklenburg County Regulation 2.0537

Fluoride Emissions From Phosphate Fertilizer Industry

Mecklenburg County Regulation 2.0534

The ozone SIP calls for Forsyth County in November 1989 and for Mecklenburg County in May 1988 do not affect the approvability of those local programs' regulations that this notice addresses. Also the approval of those local programs' regulations does not negate the SIP calls.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective July 1, 1991.

Final Action

EPA is approving the material submitted on June 14, 1990 as the Forsyth County portion of the North Carolina SIP, except 3–152(2), 3–155, 3–158, 3–159, 3–160, and 3–169; the Western North Carolina portion of the North Carolina SIP, except 1–137(g), 1–139, 1–144 (a)–(i), 1–152(2), 1–158 and 1–159; and the Mecklenburg County portion of the North Carolina SIP, except 2.0524, 2.0525, 2.0528, 2.0529, 2.0534, and 2.0537.

To the extent EPA has issued any SIP calls to the local programs with respect to the adequacy of any rules subject to this action, EPA will continue to require the local programs to correct any such rule deficiencies despite EPA's approval of this submittal.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate

circuit by July 1, 1991. This action may not be challenged later in proceedings to enforce its requirements.

This action has been classified as a table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

The Agency has reviewed this request for revisions of the federally-approved State Implementation Plan for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. This Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting, recordkeeping requirements, Sulfur oxides.

Note: Incorporation by reference of the State Implementation Plan for the State of North Carolina was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: March 18, 1991.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of Chapter I, title 40, Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart II—North Carolina

2. Section 52.1770 is amended by adding paragraph (c)(65) to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

(65) Revisions to the North Carolina SIP which include the Forsyth County, Western North Carolina and Mecklenburg County regulations which were submitted on June 14, 1990.

(i) Incorporation by reference.

(A) The entire set of Forsyth County Air Quality Control Code regulations effective December 19, 1988, except for section 3–152(2), 3–155, 3–158, 3–159, 3–160 and 3–169.

(B) The entire set of Western North Carolina regulations effective March 13, 1985 and November 9, 1988, except for Sections 1–137(g), 1–139, 1–144, 1–152(2), 1–158 and 1–159.

(C) The entire set of Mecklenburg County regulations effective April 3, 1989, except for Sections 2.0517(2), 2.0524, 2.0525, 2.0528, 2.0529, 2.0534, 2.0537.

(ii) Additional material—none.

[FR Doc. 91–10268 Filed 5–1–91; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 900941–0342]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of fishing restriction, and request for comments.

SUMMARY: NOAA announces reductions in the trip limits for widow and yellowtail rockfish caught in the groundfish fishery off Washington, Oregon, and California. These actions are authorized by the regulations implementing the Pacific Coast Groundfish Fishery Management Plan. The trip limits are designed to keep landings within the harvest guidelines for these species while extending the fishery as long as possible during the year and minimizing discards.

EFFECTIVE DATE: April 24, 1991 through December 31, 1991, unless modified, superseded, or rescinded. Comments will be accepted through May 17, 1991.

FOR FURTHER INFORMATION CONTACT: William L. Robinson (Northwest Region, NMFS) 206–526–6140; or Rodney R. McInnis (Southwest Region, NMFS) 213–514–6199.

SUPPLEMENTARY INFORMATION: Amendment 4 to the Pacific Coast Groundfish Fishery Management Plan (FMP) was approved on November 15, 1990 and final implementing regulations were published at 56 FR 736 on January 8, 1991 (correction 56 FR 13365), April 1, 1991). The amended FMP provides for rapid changes to specific management measures if they first have been designated as "routine." This designation means that the identified management measure may be implemented and adjusted for a specified species or species groups and gear type after consideration at a single meeting of the Pacific Fishery Management Council (Council) as long as the purpose of the limit is the same as originally established when the measure was designated as routine. Trip landing and frequency limits for the *Sebastes* complex (including yellowtail rockfish), and widow rockfish are among those management measures designated as routine (56 FR 736, January 8, 1991).

At its April 1991 meeting, the Council recommended the following adjustments to the routine management measures for yellowtail and widow rockfish. The Secretary of Commerce (Secretary) concurs in these recommendations and announces the following changes to the trip limits announced at 56 FR 645 (January 8, 1991).

Widow Rockfish

The 1991 harvest guideline for widow rockfish is 7,000 metric tons (mt), about 29 percent lower than the 1990 quota of 9,800–10,000 mt. The landed catch through March 16, 1991, is 2,420 mt. If the average 1989–90 catch rates occur during April–September 1991, then the 7,000 mt level will be reached on August 30. If the fishery were to continue after August 30 at 1990 catch rates, the total catch for the year would be 10,600 mt if no further restrictions are applied. The Council recommended that the current weekly trip limit of 10,000 pounds (which allows one landing of widow rockfish above 3,000 pounds per week) be lowered to 3,000 pounds (with no limit on the number of landings) on the date that the Council's Groundfish Management Team (GMT) projects necessary to extend the fishery as long as possible in 1991. Because there is no limit on the number of landings that may be made in a one-week period, the biweekly trip limit option also will be removed. The effective date for this 3,000 pounds per week trip limit will be announced in the **Federal Register** when more landings data are available. Until then, the provisions regarding management of widow rockfish announced at 56 FR 645, January 8, 1991, remain in effect.

Yellowtail Rockfish North of Coos Bay, Oregon

The 1991 harvest guideline for yellowtail rockfish caught in the Vancouver and Columbia subareas is 4,300 mt. about 10 percent higher than in 1990. Yellowtail rockfish is a large and unavoidable component of the *Sebastes* complex of rockfish. The *Sebastes* complex is managed with trip landing and frequency limits that include a specific landing limit for yellowtail rockfish.

At its April Council meeting, the GMT reported that the landed catch of the *Sebastes* complex in the Vancouver and Columbia areas through March 16, 1991, has been similar to 1989 and 1990 levels and no further adjustment to landings of the complex is warranted at this time. However, landings of yellowtail rockfish are 924 mt. about 20 percent greater than in 1990.

In addition, the GMT noted that there has been no adjustment for discarded catch in the stock assessment of yellowtail rockfish and the determination of ABC. However, a substantial fraction of the trips now land near the trip limit of yellowtail rockfish, indicating that some of these trips exceeded the trip limit and were forced to discard some catch. The GMT recommended applying the same discard rate used in the widow rockfish fishery, 16 percent, as an estimated of the discards of yellowtail rockfish until better information becomes available.

If the 20 percent increased rate of landings holds, and a 16 percent discard factor is applied, the total projected catch (landings plus discard) is 5,662 mt for the year and the harvest guideine would be reached by July 30, 1991. The monthly rate of landed catch will need to be reduced to 350 mt per month as soon as possible in order for the annual catch (landings plus discards) to stay within the harvest guideline for yellowtail rockfish in 1991.

The current weekly trip limit for the *Sebastes* complex is 25,000 pounds (including no more than 5,000 pounds of yellowtail rockfish). The biweekly trip limit is 50,000 pounds of the *Sebastes* complex (including no more than 10,000 pounds of yellowtail rockfish). The twice-weekly trip limit is 12,500 pounds of the *Sebastes* complex (including no more than 2,500 pounds of yellowtail rockfish). The frequency restrictions apply only to landings of the *Sebastes* complex that exceed 3,000 pounds; there is no limit on the number of landings less than 3,000 pounds.

The trip limitations for yellowtail rockfish in the 1991 Management Measures (56 FR 645, January 8, 1991) are for yellowtail taken coincidentally with other fish in the *Sebastes* complex and landed as a mixed catch. In order to reduce yellowtail landings, the Council recommended that trip limits for yellowtail be reduced from 10,000 to 5,000 pounds, under the biweekly trip limit option for the *Sebastes* complex (1991 Management Measures, Commercial Fishing (B)(2)(b)). At the same time, the Council recommended continuation of the weekly and twice-weekly trip limits for the *Sebastes* complex (1991 Management Measures, Commercial Fishing (B)(2)(a) and (c)), but did not specify the amount of yellowtail that could be retained. After consultation with state fishery managers from Washington and Oregon, and with Council staff, NOAA has determined that the appropriate landing limit for yellowtail landings under the weekly and twice-weekly *Sebastes* options is 3,000 pounds. The affected yellowtail limit under the twice-weekly option is being increased from 2,500 to 3,000 pounds in order to reduce the level of discards and waste that could occur under a 2,500 pound twice-weekly limit. All other provisions regarding the management of the *Sebastes* complex and yellowtail rockfish published in the Federal Register at 56 FR 645, January 8, 1991, remain in effect.

Secretarial Action

The Secretary concurs with the Council's recommendation and modifies the 1991 groundfish fishery management measures published at 56 FR 645 by making the following changes to the paragraph B.2. titled "Restrictions on the *Sebastes* Complex Caught North of Coos Bay" to read as follows:

(2) *Restrictions on the Sebastes Complex Caught North of Coos Bay.*

(a) *Weekly trip limit.* Except for the biweekly and twice-weekly trip limits provided in paragraphs (2)(b) and (2)(c), the trip limit for the *Sebastes* complex north of Coos Bay is 25,000 pounds (including no more than 3,000 pounds of yellowtail rockfish) in a one-week period. Only one landing of the *Sebastes* complex above 3,000 pounds may be made per vessel in that one-week period, and that landing may not exceed the weekly trip limit in this paragraph.

(b) *Biweekly trip limit.* If the fishery management agency of the state where the fish will be landed is notified as required by state law (WAC 220–44–050; OAR 635–04–033), the trip limit for the *Sebastes* complex north of Coos Bay is 50,000 pounds (including no more than 5,000 pounds of yellowtail rockfish) in a two-week period. After notification is given, and while it remains in effect, only one landing of the *Sebastes* complex above 3,000 pounds may be made per vessel in each two-week period, and that landing may not exceed the biweekly trip limit in this paragraph. Notification and revocation procedures appear in paragraph E.

(c) *Twice-weekly trip limit.* If the fishery management agency of the state where the fish will be landed is notified as required by state law (WAC 220–44–050; OAR 635–04–033), the trip limit for the *Sebastes* complex north of Coos Bay is 12,500 pounds (including no more than 3,000 pounds of yellowtail rockfish). After notification is given, and while it remains in effect, only two landings of the *Sebastes* complex above 3,000 pounds may be made per vessel in a one-week period, and each landing may not exceed the twice-weekly trip limit in this paragraph. Notification and revocation procedures appear in paragraph E.

(d) Unless retention or landing of the *Sebastes* complex or yellowtail rockfish has been prohibited, a vessel which has landed a weekly (or biweekly or twice-weekly) limit may continue to fish on the limit for the next fishing period (weekly, biweekly, or twice-weekly) so long as the fish are not landed (offloaded) until the next fishing period.

Classification

This action is taken under the authority of and in accordance with the regulations implementing Amendment 4 to the FMP at 50 CFR 663.23(c)(1)(i) (A) and (C).

This action is authorized by Amendment 4 to the FMP for which a Supplemental Environmental Impact Statement (SEIS) was prepared in accordance with the National Environmental Policy Act (NEPA). Because this action and its impacts have not changed significantly from those considered in the SEIS, this action is categorically excluded from the NEPA requirements to prepare an environmental assessment in accordance with paragraph 5a(3) of the NOAA Directives Manual 02–10.

This action is in compliance with Executive Order 12291, and is covered by the Regulatory Flexibility Analysis prepared for the authorizing regulations.

The public has had the opportunity to comment on this action. The public participated in GMT, Groundfish Advisory Subpanel, Scientific and Statistical Committee, and Council meetings in April 1991 that resulted in these recommendations from the Council. Additional public comments will be accepted for 15 days after publication of this notice in the Federal Register.

List of Subjects in 50 CFR Part 663

Fisheries, Fishing.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 26, 1991.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-10326 Filed 4-26-91; 4:43 pm]

BILLING CODE 3510-22-M

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50 CFR Part 672

[Docket No. 901184-1042]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure; request for comments.

SUMMARY: The Regional Director, Alaska Region, NMFS, (Director), is establishing a directed fishing allowance and prohibiting directed fishing for Pacific ocean perch in the Western Regulatory Area of the Gulf of Alaska. This action is necessary to prevent the total allowable catch (TAC) for Pacific ocean perch in the Western Regulatory Area from being exceeded before the end of the fishing year. The intent of this action is to promote optimum use of groundfish while conserving Pacific ocean perch stocks.

DATES: Effective from noon, Alaska local time (A.l.t.), April 27, 1991, through midnight, A.l.t., December 31, 1991. Comments are invited on or before May 13, 1991.

ADDRESSES: Comments should be mailed to Dale R. Evans, Chief, Fisheries Management Division, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802-1668, or be delivered to 9109 Mendenhall Mall Road, Federal Building Annex, suite 6, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council and is implemented by regulations appearing at 50 CFR 611.92 and parts 620 and 672.

In accordance with § 672.20(c)(2), if the Director determines that the amount of a target species category apportioned to a fishery is likely to be reached, the Director may establish a directed fishing allowance for that species or species group. In establishing a directed fishing allowance, the Director shall consider the amount of that target species or species group that will be taken as incidental catch in directed fishing for other species in the same regulatory area or district. If the Director establishes a directed fishing allowance and that allowance is or will be reached, he will prohibit directed fishing for that species or species group in the specified regulatory area or district.

The amount of a species or species group apportioned to a fishery is TAC, as defined in § 672.20(a)(2) and § 672.20(c)(1). The 1991 TAC for Pacific ocean perch in the Western Regulatory Area of the Gulf of Alaska is 1,624 metric tons (mt) (56 FR 8723; March 1, 1991). The Director has determined that 624 mt of Pacific ocean perch are necessary as bycatch in anticipated groundfish fisheries in the Western Regulatory Area. The Director is establishing a directed fishing allowance of 1,000 mt for Pacific ocean perch in the Western Regulatory Area. At current harvest rates, the Director anticipates the entire directed fishing allowance will be taken by April 27. Therefore, the Director is prohibiting directed fishing for Pacific ocean perch in that area, effective beginning 12:00 noon, A.l.t., April 27, 1991.

After 12:00 noon, A.l.t., April 27, 1991, in accordance with § 672.20(g)(3), amounts of Pacific ocean perch retained on board vessels in the Western Regulatory Area must be less than 20 percent of the amount of all other fish species as measured in round weight equivalents, retained at any time by the vessel during the same trip. This closure is in effect for the remainder of the fishing year.

Classification

This action is taken under Section 672.20 and is in compliance with Executive Order 12291. Immediate effectiveness of this notice is necessary to prevent wastage of groundfish that will occur if TACs are exceeded and retention of Pacific ocean perch is prohibited. The Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment on this notice or to delay its effective date. However, interested persons are invited to submit comments in writing to the address above on or before 15 days after the effective date of this notice.

List of Subjects in 50 CFR Part 672

Fish, Fisheries, Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 26, 1991.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-10325 Filed 4-26-91; 4:43 pm]

BILLING CODE 3510-22-M

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50 CFR Part 672

[Docket No. 901184-1042]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure; request for comments.

SUMMARY: The Director, Alaska Region, NMFS, (Regional Director), has determined that the remainder of the total allowable catch (TAC) specified for Pacific cod in the Central Regulatory Area of the Gulf of Alaska is necessary to support other anticipated groundfish fisheries in that area. He is establishing a directed fishing allowance and is prohibiting further directed fishing for Pacific cod by vessels fishing in that area with any gear. These actions are necessary to prevent the TAC of Pacific cod from being exceeded. The intent of this action is to ensure optimum use of groundfish while conserving Pacific cod stocks.

DATES: Effective from 12 noon Alaska local time (A.l.t.), April 29, 1991, through December 31, 1991. Comments are invited on or before May 13, 1991.

ADDRESSES: Comments should be mailed to Dale R. Evans, Chief, Fisheries Management Division, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802-1668, or be delivered to 9109 Mendenhall Mall Road, Federal Building Annex, Suite 6, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Jessica A. Gharrett, Resource Management Specialist, NMFS, 907-586-7229.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone within the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council and is

implemented by regulations appearing at 50 CFR 611.92 and parts 620 and 672.

The amount of a species or species group apportioned to a fishery, the TAC, is defined at § 672.20(a)(2) and § 672.20(c)(1). The final notice of 1991 initial specifications of groundfish established the Pacific cod TAC in the Central Regulatory Area at 45,000 metric tons (mt) (March 1, 1991, 56 FR 8723).

Under § 672.20(c)(2), if the Regional Director determines that the amount of a target species or "other species" category apportioned to a fishery is likely to be reached, the Regional Director may establish a directed fishing allowance for that species or species group. In establishing a directed fishing allowance, the Regional Director shall consider the amount of that species or species group that will be taken as incidental catch in directed fishing for other species in the same regulatory area or district. If the Regional Director establishes a directed fishing allowance and that allowance is or will be reached, he will prohibit directed fishing for that species or species group in the specified regulatory area or district.

The Regional Director has determined that 3,000 mt of Pacific cod in the Central Regulatory Area is necessary as bycatch to support anticipated groundfish fisheries. Therefore, he is establishing a directed fishing allowance of 42,000 mt of Pacific cod for the Central Regulatory Area. Furthermore, he has determined that the directed fishing allowance will be taken by April 29, 1991, and is prohibiting directed fishing for Pacific cod in that area on that date.

In accordance with § 672.20(g), vessels fishing in the Central Regulatory Area after the closure may retain Pacific cod at any particular time during a trip in amounts less than 20 percent of the amount of all other fish species retained on board the vessel, as measured in round weight equivalents, at any time during the same trip.

Classification

This action is taken under 50 CFR 672.20 and is in compliance with Executive Order 12291.

The Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment or to delay the effective date of this notice. Immediate effectiveness of this notice is necessary to benefit U.S. fishermen participating in DAP Pacific cod operations who would otherwise unnecessarily be prohibited from fishing due to a premature closure. However, interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

List of Subjects in 50 CFR Part 672

Fish, Fisheries, Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 29, 1991.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-0439 Filed 4-29-91; 4:45 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 85
Thursday, May 2, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 75

[No. LS-90-112]

Increase Testing Fees for Inspection and Certification of Quality of Agricultural and Vegetable Seeds Under the Agricultural Marketing Act of 1946

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) is proposing to amend 7 CFR part 75 by increasing the applicable fees for testing seed under the voluntary seed inspection and certification program. The fees which are to be paid by the users of the service are necessary because of increased costs of operating the program. The fee increase is intended to generate sufficient revenue to offset the costs of operating the program. In addition, a new section would be added to display the OMB control number assigned to the information collection requirements contained in part 75.

DATES: Comments must be received on or before June 3, 1991.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to Seed Regulatory and Testing Branch, Livestock and Seed Division, AMS, USDA, Building 506, BARC-E, Beltsville, Maryland 20705, and should bear a reference to the date and page number of this issue of the Federal Register. Comments submitted in reference to this document will be made available for public inspection during regular business hours.

FOR FURTHER INFORMATION CONTACT: James P. Triplitt, Chief, Seed Regulatory and Testing Branch, 301-344-4430.

SUPPLEMENTARY INFORMATION: This proposed rule is authorized by the Agricultural marketing Act (AMA) of 1946, as amended, 7 U.S.C. 1621 *et seq.*, which provides for voluntary seed inspection and certification services. Section 203(h) of the AMA authorizes the Secretary to inspect, and certify the quality of agricultural products and collect such fees as reasonable to cover the cost of service rendered. This proposed revision is to increase the fees to be charged for the inspection and certification of agricultural and vegetable seeds to reflect the Department's cost of operating the program.

This proposed action has been reviewed under Executive Order No. 12291 and Departmental Regulation 1512-1 and has been determined to be a non-major rule under the criteria contained therein. This action was also reviewed under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Administrator of AMS has determined that this action will not have a substantial economic impact on a significant number of small entities. Although some seed growers and shippers using this service may be classified as small entities, the effect of the increased fees will be minimal. Under the proposal the average cost for a test will increase from $41.26 to approximately $49.98. It is estimated that the total revenue generated by this increase will be approximately $20,000 annually.

The Agricultural Marketing Act (AMA) of 1946, as amended, provides for the inspection and certification of quality of agricultural and vegetable seeds in order to bring about efficient, orderly marketing and to assist the development of new or expanding markets. The AMA provides for the collection of fees and charges equal to the cost of providing the service. The service is voluntary and available to anyone.

Under the voluntary program samples of agricultural and vegetable seeds submitted are tested for factors such as purity and germination at the request of the applicant for the service. In addition, grain samples, submitted at the applicant's request, by the Federal Grain Inspection Service are examined for the presence of certain weed and crop seed. A Federal Seed Analysis, Sample Inspection, Certificate is issued giving the test results. Of 2,000 samples tested in 1990, most represented seed or grain scheduled for export. Many importing countries require a Federal Seed Analysis Certificate on U.S. seed.

The present fee of $23.40 per hour has been in effect since June 1, 1984. Since that time there have been increases in salaries and fringe benefits of botanists, clerical, and supervisory personnel as well as all administrative costs of operating the program. In addition, some aging testing equipment such as seed germinators must be replaced in order to continue to provide accurate, timely test results. After reviewing the current costs the department has determined that the present fee is insufficient to cover the department's cost of operation. In view of the above, the Agency proposes to increase the hourly rate for voluntary seed inspection and certification services from $23.40 to $29.40. In addition, the cost of issuing additional duplicate original certificates will be increased from $3.30 to $7.35. Approximately one-fourth hour is required to issue additional duplicate certificates.

In addition, this action would add a new section 75.49 to display the OMB control number assigned to the information collection requirements in part 75. The information collection requirements contained in part 75 have been previously approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), and has been assigned OMB Control No. 0581-0140.

List of Subjects in 7 CFR Part 75

Administrative practice and procedure, Agricultural commodities, Reporting and recordkeeping requirements, Seeds, Vegetables.

For reasons set forth in the preamble, it is proposed that 7 CFR part 75 be amended as follows:

PART 75—REGULATIONS FOR INSPECTION AND CERTIFICATION OF QUALITY OF AGRICULTURAL AND VEGETABLE SEEDS.

1. The authority citation for part 75 continues to read as follows:

Authority: Agricultural Marketing Act of 1946, sec. 203, 60 Stat. 1087, as amended (7 USC 1622).

§ 75.41 [Amended]

2. In § 75.41, remove "$23.40" and add in its place "$29.40".

§ 75.47 [Amended]

3. In § 75.47, remove "$3.30" and add in its place "$7.35".

4. A new § 75.49 is added to read as follows:

§ 75.49 OMB Control numbers.

The control number assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 is as follows: OMB Control No. 0581–0140.

Done at Washington, DC, on: April 25, 1991.

Robert C. Keeney,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 91–10214 Filed 5–1–91; 8:45 am]

BILLING CODE 3410–02–M

Rural Electrification Administration

7 CFR Part 1786

RIN 0572–AA53

Discounted Prepayments on REA Notes in the Event of a Merger of Certain REA Electric Borrowers

AGENCY: Rural Electrification Administration; USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to amend 7 CFR chapter XVII part 1786, Discounted Prepayments on REA Notes, by adding a new subpart E, Discounted Prepayments on REA Notes in the Event of a Merger of Certain REA Electric Borrowers. The addition to part 1786 establishes policies and procedures to implement the provisions of 306B of the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*) ("Act"). Section 306B(b) authorizes the Administrator of REA to permit certain borrowers to prepay loans made under the Act at the lesser of the outstanding principal balance due on the loan or the loan's present value discounted from the face value at maturity at a rate set by the Administrator. These borrowers are defined as electrical organizations resulting from a merger or consolidation between a borrower and an organization which, prior to October 1, 1987, prepaid its direct or insured loans pursuant to sectin 306B(a) (See appendix A) (See 7 CFR part 1786 subpart C, Discounted Prepayments on REA Notes). Prepayments by a borrower hereunder shall be made not later than one year after the effective date of the merger, consolidation, or other transaction. This proposed regulation provides a formula for computing the amount which the borrower must pay and establishes certain other requirements which borrowers must meet in order to prepay loans.

DATES: Comments must be received by REA June 3, 1991.

ADDRESSES: Comments should be addressed to: Acting Chief, Finance and Management Staff, Rural Electrification Administration, room 1270–S, 14th and Independence Avenue SW., Washington, DC 20250. REA requests an original and three copies of all comments.

FOR FURTHER INFORMATION CONTACT: David J. Lessels, Acting Chief, Finance and Management Staff, U.S. Department of Agriculture, Rural Electrification Administration, 14th and Independence Avenue SW., Washington, DC 20250 (202) 382–0094.

SUPPLEMENTARY INFORMATION: Pursuant to the RE Act (the Act), REA hereby proposes to amend 7 CFR chapter XVII part 1786 by adding subpart E concerning discounted prepayments on REA notes. This proposed action has been reviewed in accordance with Executive Order 12291, Federal Regulation. This action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; (3) result in significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets and therefore has been determined to be "not major". This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environment Policy Act of 1969 (42 U.S.C. 432 et seq.(1976)), and therefore, does not require an environmental impact statement or environment assessment. This program is listed in the Catalog of Federal Domestic Assistance under No. 10.850, Rural Electric Loans and Guarantees. For the reasons set forth in the final rule and related notice to 7 CFR part 3015, subpart V (50 FR 47034, November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

The reporting and/or recordkeeping requirements contained in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). They will not be effective until approved by OMB. The public reporting burden for this collection of information is estimated to average 45 hours per response including time for reviewing instructions, searching data sources, gathering and maintaining the date needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate to Department of Agriculture, Clearance Officer, Office of Information Resources Management, room 404–W, Washington, DC 20250 and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

Background

REA provides long-term low interest rate loans to eligible borrowers for the purpose of furnishing and improving electric and telephone service in rural areas. The notes evidencing such loans bear interest at either two or five percent. The notes, as well as the proceeds from the sale, assignment or prepayment of the notes are assets of the Rural Electrification and Telephone Revolving Fund ("Fund") to be used for such purposes as are permitted by the Act. Section 2387 of Public Law 101–624, enacted November 28, 1990, amended the Act by adding section 306B(b) which provides that an REA loan may be prepaid by certain electric borrowers at the lesser of the outstanding principal balance due on such loan or the loans's present value discounted from the face value at maturity at a rate set by the Administrator (Discounted Present Value). These borrowers are defined as electrical organizations resulting from a merger or consolidation between a borrower and an organization which, prior to October 1, 1987, prepaid its direct or insured loans pursuant to section 306B(a). There were 29 electric borrowers that prepaid their direct and/or insured loans under Section 306B(a), and these borrowers are listed in appendix A to subpart E.

The proposed regulations would implement section 306B(b) establishing terms and conditions of prepayment. The proposed formula to determine the Discounted Present Value of the notes uses, as the discount rate, the current cost of funds to the U.S. Treasury. This rate will be based on market yields and estimated for comparable maturities.

Among the terms and conditions of prepayment are the following:

(a) The borrower must be current on all payment due on its outstanding REA Notes and all other payment obligations owed to REA.

(b) The borrower must agree to prepay all of its outstanding REA Notes.

(c) The borrower must identify the source of financing that will be used to refinance its outstanding REA notes. The borrower must certify in writing whether the financing will be tax exempt; and, if so, shall furnish all information on the financing sufficient to enable REA to adjust the discount to the equivalent to fully taxable financing.

(d) The borrower must have expended all funds advanced on account of the REA Notes for the purposes for which such funds were advanced or have repaid REA for all unexpended funds.

(e) The borrower must agree to a rescission of the unadvanced balance of the REA Notes, outstanding as of the date of its application for prepayment.

(f) The borrower must agree that the borrower, its successors and assigns, shall pay to the Government, as a condition of receiving additional loans or loan guarantees pursuant to titles I and III of the Act, an amount equal to the aggregate of the difference with respect to each of the REA Notes between (1) the amount outstanding on the REA Note and (2) the Discounted Present Value of the prepaid REA Note; with interest accruing quarterly. The interest rates shall be the rates provided in the respective REA Notes.

(g) If the borrower is a party to a wholesale power contract with a power supplier financed pursuant to the Act, the borrower must provide the Administrator with such assurances as the Administrator may request that it will meet its obligations to the power supplier.

List of Subjects in 7 CFR Part 1786

Electric power, Federal Financing Bank, Loan programs—communication, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas, Telephone.

In view of the above, REA proposes to amend 7 CFR chapter XVII, part 1786 as follows:

1. The authority citation for part 1786 is added to read as follows:

Authority: 7 U.S.C. 901–950b; title I, subtitle B, Public Law 99–509; Public Law 101–624, 104 Stat. 4051; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23, delegation of authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72, unless otherwise noted.

PART 1786—[AMENDED]

Subpart D—REA Privatization Demonstration Prepayment Program for the State of Alaska

2. Subpart D is amended by adding and reserving sections 1786.87–1786.94.

3. A new Subpart E is added to part 1786 to read as follows:

Subpart E—Discounted Prepayments on REA Notes in the Event of a Merger of Certain REA Electric Borrowers

Sec.

Subpart E—Discounted Prepayments on REA Notes in the Event of a Merger of Certain REA Electric Borrowers

§ 1786.95 Purpose.

This subpart sets forth the policies and procedures of REA whereby certain electric borrowers may prepay outstanding REA Notes at the Discounted Present Value of the REA Notes with private financing.

§ 1786.96 Definitions.

As used in this subpart:

Act means the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.).*

Administrator means the Administrator of REA.

Consolidation means:

(1) The combination of two or more borrower or nonborrower organizations, pursuant to state law, into a new successor organization that takes over the assets and assumes the liabilities of those organizations; or

(2) Any other transaction including an acquisition which has substantially the same effect.

Discounted Present Value shall have the meaning specified in § 1786.98.

Fund means the Rural Electrification and Telephone Revolving Fund pursuant to the Act.

Merger means:

(1) The combining, pursuant to state law, of borrower or nonborrower organizations into an existing survivor organization that takes over the assets and assumes the liabilities of the merged organizations; or

(2) Any other transaction including an acquisition which has substantially the same effect.

REA means the Rural Electrification Administration, an agency of the United States Department of Agriculture.

REA Loan Agreement means the agreement between the borrower and REA providing for loans pursuant to the Act.

REA Notes means those notes, bonds or other obligations evidencing indebtedness created by loans pursuant to titles I and III of the Act (7 U.S.C. 901–940).

§ 1786.97 Prepayment.

There were 29 former REA electric borrowers that prepaid their direct or insured loans under section 306B(a) of the Act prior to October 1, 1987. (See subpart C of this part.) These borrowers are listed in appendix A subpart E of this part. Any REA electric borrower which is the result of a merger or consolidation involving any of these 29 former borrowers and a borrower with outstanding Notes may, after meeting all requirements of this subpart, prepay all outstanding REA Notes issued or assumed by the borrower upon paying the lesser of the outstanding balance or the Discounted Present Value. Such prepayment must be made not later than one year after the effective date of the merger or consolidation.

§ 1786.98 Discounted present value.

(a) The Discounted Present Value shall be calculated by the Fiscal Accounting Division of REA before prepayment is made by summing the present values of all remaining payments on all outstanding notes according to the following formula to compute the discounted present value of each note and adjusting as here and after provided for tax exempt financing.

$$\text{Present value} = \sum_{k=1}^{n} \frac{P_k}{\prod_{k=1}^{k} \left[1.0 + \left(\frac{D1_i}{365} + \frac{D2_i}{366}\right) \times I\right]}$$

Where:

P_k = Total payment, including interest, due on the k^{th} payment date following the prepayment date.

n = Total number of remaining payments dates.

I = The discount rate applied to each transaction will be ascertained by using data specified in the "Federal Reserve Statistical Release" which

is published each Monday. (See Appendix b to Subpart e of this part.) The specific discount rate will be the discount rate(s) specified in the "Treasury Constant Maturities" section of this publication eight working days prior to the closing. In applying the discount rate, the 1-year Treasury rate will be used for all notes with a remaining term of less than 2 years; the 2-year Treasury rate for notes with maturities between 2 and 3 years; the 3-year Treasury rate for all notes with maturities years; the 3-year Treasury rate for all notes with maturities between 3 and 5 years; the 5-year Treasury rate for all notes with maturities between 5 and 7 years; the 7-year Treasury rate for all notes with maturities between 7 and 10 years; the 10-year Treasury rate for all notes with maturities between 10 and 30 years; and the 30-year Treasury rate for all notes with maturities longer than 30 years.

$D1_i$=Number of days in the i^{th} payment period that are in a non-leap year (365 day year).

$D2_i$=Number of days in the i^{th} payment period that are in a leap year (366 day).

(b) Notwithstanding paragraph (a) of this section, in the event that the borrower shall elect to prepay using tax exempt financing, the calculation of the Discounted Present Value shall be adjusted to make the discount the equivalent of fully taxable financing.

§ 1786.99 Eligibility criteria.

To be eligible to prepay REA Notes at the Discounted Present Value, a borrower must comply with the following criteria:

(a) The borrower must be current on all payments due on its outstanding REA Notes and all other payment obligations owed to REA;

(b) The borrower must agree to prepay all of its outstanding REA Notes;

(c) The borrower must identify the source of financing that will be used directly or indirectly to refinance its outstanding REA Notes. The borrower must certify in writing whether such financing will be tax exempt and, if so, shall furnish all information on the financing as REA may request to enable REA to adjust the discount to the equivalent to fully taxable financing;

(d) The borrower must have expended all funds advanced on account of the REA Notes for the purposes for which such funds were advanced or repaid REA for all unexpended funds;

(e) The borrower must agree to a rescission of the unadvanced balance of any REA Notes outstanding as of the date of its application for prepayment;

(f) The borrower must agree that the borrower, its successors and assigns, shall pay to the Government, as a condition of receiving additional loans or loan guarantees pursuant to titles I and III of the Act, an amount equal to the aggregate of the difference with respect to each of the REA Notes between the amount outstanding on the REA Note and the Discounted Present Value of the REA Note upon prepayment with interest accruing quarterly; the interest rates shall be the rates provided in the respective Notes; and

(g) If the borrower is a party to a wholesale power contract with a power supplier financed pursuant to the Act, the borrower must provide the Administrator with such assurances as the Administrator may request that it will meet its obligations to the power supplier. The borrower must also specifically agree to the following limitation: The borrower agrees that, for so long as the Wholesale Power Contract shall be in effect between the borrower and the power supplier, the borrower will not, without the approval in writing of the power supplier and the Administrator, take or suffer to be taken any steps for reorganization or to consolidate with or merge into any corporation or any other public power district, or to sell, lease or transfer (or make any agreement therefore) all or a substantial portion of its assets, whether now owned or hereafter acquired. Notwithstanding the foregoing, the borrower may take or suffer to be taken any steps for reorganization or to consolidate with or merge into any corporation or any other public power district, or to sell, lease or transfer (or make any agreement therefor) all or a substantial portion of its assets, whether now owned or hereafter acquired, so long as the borrower shall pay such portion of the outstanding indebtedness evidenced by the Power Supplier Notes at the time outstanding as shall be determined by the Power Supplier with the prior written consent of the Administrator and shall otherwise comply with such reasonable terms and conditions as the Administrator and the Power Supplier shall require.

§ 1786.100 Application procedure.

Any borrower seeking to prepay its REA Notes under this subpart should apply to the appropriate REA Area Director not less than 60 days prior to one year after the effective date of the merger or consolidation by submitting:

(a) A board resolution that:

(1) Requests approval of the prepayment of the borrower's outstanding REA Notes;

(2) States the intent of the borrower to comply with all eligibility criteria set forth in § 1786.99 of this subpart; and

(3) Identifies the source of financing.

(b) A list of all REA Notes together with the outstanding amount on such notes.

(c) An opinion of counsel as to the effective date of the merger or consolidation.

(d) Such additional information as the Administrator will request.

§ 1786.101 Approval of application.

The applications will be reviewed and, if satisfactory, approved. Closing will be scheduled upon approval.

§ 1786.102 Prepayment agreement.

Upon approving an application for prepayment under this Subpart, the Administrator shall notify the borrower and deliver to the borrower for its execution a prepayment agreement which shall set forth and provide:

(a) The REA Notes to be prepaid and when the Discounted Present Value will be calculated.

(b) The place, date and conditions for closing.

(c) Agreement that the unadvanced balance of REA Notes shall be rescinded.

(d) Agreement that the borrower, or its successors or assigns, shall pay to the Government, as a condition of receiving additional loans or loan guarantees pursuant to titles I and III of the Act, an amount equal to the aggregate of the difference with respect to each of the REA Notes between the amount outstanding on the REA Note and the Discounted Present Value of the prepaid REA Note; with interest accruing quarterly. The interest rates shall be the rates provided in the respective REA Notes.

(e) Assurances that the borrower will meet its obligations to any power supplier financed pursuant to the Act.

(f) Such other terms and conditions as the Administrator deems appropriate.

§ 1786.103 Security.

If, after prepayment of REA Notes, the Government should continue to hold liens on the borrower's property that secure guarantees pursuant to the Act, the Administrator of REA will consider a request for the accommodation of such liens for the purpose of providing security for loans the proceeds of which were used to prepay REA Notes. Such lien accommodations shall be limited in amount to the Discounted Present Value

of the REA Notes plus such costs, as the Administrator shall determine to be reasonable, incurred by the borrower in obtaining such loans.

§ 1786.104 Loan fund audit.

REA shall have the right to audit within 6 months of closing, transactions involving the REA construction fund established and maintained by the borrower pursuant to the terms of the REA Loan Agreement and to inspect all books, records, accounts and other documents and papers of the borrower. Should REA determine that the borrower has made disbursements of funds advanced pursuant to REA Notes which do not comply with the requirements of the REA Loan Agreement, the borrower shall be required to pay the Government an amount equal to the difference between the amount which the borrower prepaid on such REA Notes evidencing REA loans funds which were improperly disbursed and the amount which the borrower would otherwise have been required to return to the Government as a result of noncompliance if the borrower had not prepaid such REA Notes. (See 7 CFR part 1721, Post-Loan Policies and Procedures for Insured Electric Loans.)

§ 1786.105 Closing.

(a) The borrower shall be responsible for obtaining all approvals necessary to consummate the transaction as required by the prepayment agreement including such approvals as may be required by regulatory bodies and other lenders.

(b) The REA Notes shall be prepaid at a closing to be held in accordance with the prepayment agreement. REA shall designate the date of closing which in no event shall be later than one year after the effective date of the merger or consolidation. At closing, in addition to paying all current interest due on the date of prepayment, a borrower shall prepay the REA Notes by paying to the Government an amount equal to the lesser of the outstanding balance or the Discounted Present Value of the REA Notes. The closing shall otherwise be conducted as prescribed in the prepayment agreement.

§ 1786.106 Other prepayments.

REA loan documentation generally permits borrowers to prepay REA Notes by paying the outstanding balance due thereon. Nothing in this Subpart shall prohibit any borrower from prepaying its outstanding REA Notes in accordance with the terms thereof. The provisions of this Subpart shall not be applicable to such prepayment.

Appendix A to Subpart E of Part 1786—Listing of Eligible Borrowers

State	Borrower name and address
Colorado	Colorado-Ute Electric Assn., Inc., Montrose
Florida	Lee County Electric Coop. Inc., North Fort Myers
Indiana	Clark County Rural Elec. Memb. Corp., Sellersburg
Louisiana	Beauregard Electric Cooperative, Inc., Deridder
Missouri	Cuivre River Electric Cooperative, Inc., Troy
Nebraska	Roosevelt Public Power District, Mitchell
Nebraska	Howard Greely Rural Public Power Dist., St. Paul
Nebraska	Cuming County Public Power District, West Point
Nebraska	York County Rural Public Power District, York
Nebraska	Elkhorn Rural Public Power District, Battle Creek
Nebraska	Southern Nebraska Rural P.P.D., Grand Island
Nebraska	McCook Public Power District, McCook
Nebraska	Niobrara Valley Electric Memb. Corp., O'Neill
Nebraska	Cornhusker Public Power District, Columbus
Nebraska	Custer Public Power District, Broken Bow
Nebraska	Northwest Rural Public Power Dist., Hay Springs
Nebraska	Southwest Public Power District, Palisade
Nebraska	Loup Valleys Rural Public Power District, Ord
Nebraska	South Central Public Power District, Nelson
Oklahoma	Peoples' Electric Cooperative, Ada
Texas	Deaf Smith County Electric Coop. Inc., Hereford
Texas	Pedernales Electric Coop. Inc., Johnson City
Texas	Bandera Electric Cooperative, Inc., Bandera
Texas	Guadalupe Valley Electric Coop., Inc., Gonzales
Texas	Bluebonnet Electric Cooperative, Inc., Giddings
Texas	Cap Rock Electric Cooperative, Inc. Stanton
Texas	San Barnard Electric Cooperative, Inc., Bellville
Washington	Inland Power & Light Company, Spokane
Washington	Pub. Util. Dist. No. 1 Grays Harbor Co., Aberdeen

BILLING CODE 3410-15-M

Appendix B to Subpart E of Part 1786—Federal Reserve Statistical Release

FEDERAL RESERVE statistical release

These data are released each Monday. The availability of the release will be announced when the information is available, on (202) 452-3206.

H.15 (519)

For immediate release
February 4, 1991

SELECTED INTEREST RATES

Yields in percent per annum

Instruments	1991 JAN 28	1991 JAN 29	1991 JAN 30	1991 JAN 31	1991 FEB 1	This week	Last week	1991 JAN
FEDERAL FUNDS (EFFECTIVE)[1 2 3]	7.61	7.16	6.96	8.18	6.30	7.46	6.88	6.91
COMMERCIAL PAPER[3 4 5]								
1-MONTH	6.88	6.96	6.95	6.99	6.73	6.90	6.83	7.12
3-MONTH	6.92	6.96	6.94	6.95	6.67	6.89	6.92	7.10
6-MONTH	6.87	6.91	6.88	6.88	6.58	6.82	6.86	7.02
FINANCE PAPER PLACED DIRECTLY[3 4 6]								
1-MONTH	6.76	6.85	6.83	6.83	6.55	6.76	6.68	6.95
3-MONTH	6.75	6.83	6.83	6.76	6.46	6.73	6.77	6.92
6-MONTH	6.53	6.53	6.59	6.53	6.19	6.47	6.55	6.59
BANKERS ACCEPTANCES (TOP RATED)[3 4 7]								
3-MONTH	6.80	6.82	6.77	6.68	6.30	6.67	6.76	6.96
6-MONTH	6.67	6.70	6.65	6.55	6.15	6.54	6.63	6.84
CDS (SECONDARY MARKET)[3 8]								
1-MONTH	6.78	6.85	6.87	6.82	6.52	6.77	6.77	7.10
3-MONTH	6.94	6.95	6.93	6.88	6.51	6.84	6.94	7.17
6-MONTH	6.95	6.98	6.95	6.88	6.51	6.85	6.97	7.17
EURODOLLAR DEPOSITS (LONDON)[3 9]								
1-MONTH	6.81	6.88	6.88	6.88	6.88	6.86	6.81	7.13
3-MONTH	6.94	7.06	7.00	6.94	6.94	6.98	7.01	7.23
6-MONTH	7.00	7.00	7.00	6.94	6.94	6.98	7.04	7.23
BANK PRIME LOAN[2 3 10]	9.50	9.50	9.50	9.50	9.50	9.50	9.50	9.52
DISCOUNT WINDOW BORROWING[2 11]	6.50	6.50	6.50	6.50	6.00	6.50	6.50	6.50
U.S. GOVERNMENT SECURITIES								
TREASURY BILLS								
AUCTION AVERAGE[3 4 12]								
3-MONTH	6.22					6.22	6.14	6.30
6-MONTH	6.28					6.28	6.21	6.34
1-YEAR								6.22
AUCTION AVERAGE(INVESTMENT)[12]								
3-MONTH	6.41					6.41	6.32	6.49
6-MONTH	6.58					6.58	6.50	6.64
SECONDARY MARKET[3 4]								
3-MONTH	6.25	6.22	6.20	6.19	6.00	6.17	6.12	6.22
6-MONTH	6.26	6.26	6.24	6.20	5.97	6.19	6.20	6.28
1-YEAR	6.24	6.20	6.17	6.13	5.91	6.13	6.19	6.25
TREASURY CONSTANT MATURITIES[13]								
1-YEAR	6.64	6.59	6.56	6.51	6.27	6.51	6.58	6.64
2-YEAR	7.12	7.10	7.07	7.05	6.83	7.03	7.09	7.13
3-YEAR	7.38	7.35	7.34	7.30	7.10	7.29	7.35	7.38
5-YEAR	7.67	7.64	7.64	7.62	7.45	7.60	7.66	7.70
7-YEAR	7.93	7.90	7.90	7.89	7.75	7.87	7.92	7.97
10-YEAR	8.06	8.05	8.05	8.03	7.91	8.02	8.04	8.09
30-YEAR	8.23	8.20	8.23	8.21	8.09	8.19	8.22	8.27
COMPOSITE								
OVER 10 YEARS(LONG-TERM)[14]	8.29	8.26	8.29	8.27	8.15	8.25	8.28	8.33
CORPORATE BONDS								
MOODY'S SEASONED								
AAA	9.03	9.01	9.00	8.99	8.96	9.00	9.05	9.04
BAA	10.43	10.37	10.35	10.33	10.24	10.34	10.44	10.45
A-UTILITY[15]					9.65	9.65	9.80	9.83
STATE & LOCAL BONDS[16]				7.00		7.00	7.06	7.08
CONVENTIONAL MORTGAGES[17]					9.56	9.56	9.61	9.64

FOOTNOTES

1. The daily effective federal funds rate is a weighted average of rates on trades through N.Y. brokers.
2. Weekly figures are averages of 7 calendar days ending on Wednesday of the current week; monthly figures include each calendar day in the month.
3. Annualized using a 360-day year or bank interest.
4. Quoted on a discount basis.
5 An average of offering rates on commercial paper placed by several leading dealers for firms whose bond rating is AA or the equivalent.
6. An average of offering rates on paper directly placed by finance companies.
7. Representative closing yields for acceptances of the highest rated money center banks.
8. An average of dealer offering rates on nationally traded certificates of deposit.
9. Bid rates for Eurodollar deposits at 11 a.m. London time.
10. One of several base rates used by banks to price short-term business loans.
11. Rate for the Federal Reserve Bank of New York.
12. Auction date for daily data; weekly and monthly averages computed on an issue-date basis.
13. Yields on actively traded issues adjusted to constant maturities. Source: U.S. Treasury.
14. Unweighted average of rates on all outstanding bonds neither due nor callable in less than 10 years, including one very low yielding "flower" bond.
15. Estimate of the yield on a recently offered, A-rated utility bond with a maturity of 30 years and call protection of 5 years; Friday quotations.
16. Bond Buyer Index, general obligation, 20 years to maturity, mixed quality; Thursday quotations.
17. Contract interest rates on commitments for fixed-rate first mortgages. Source: FHLMC.

Note: Weekly and monthly figures are averages of business days unless otherwise noted.

DESCRIPTION OF THE TREASURY CONSTANT MATURITY SERIES

Yields on Treasury securities at 'constant maturity' are interpolated by the U.S. Treasury from the daily yield curve. This curve, which relates the yield on a security to its time to maturity, is based on the closing market bid yields on actively traded Treasury securties in the over-the-counter market. These market yields are calculated from composites of quotations reported by five leading U.S. Government securities dealers to the Federal Reserve Bank of New York. The constant maturity yield values are read from the yield curve at fixed maturities, currently 1, 2, 3, 5, 7, 10, and 30 years. This method provides a yield for a 10-year maturity, for example, even if no outstanding security has exactly 10 years remaining to maturity.

BILLING CODE 3410-15-C

George E. Pratt
Acting Administrator.
[FR Doc. 91-10073 Filed 5-1-91; 8:45 am]
BILLING CODE 3410-15-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-89-AD]

Airworthiness Directives; McDonnell Douglas Model DC-10 and KC-10A (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-10 and KC-10A (Military) series airplanes, which would require modification to the Master Caution Indicating System to indicate when the hydraulic system number 3 automatic shutoff valve has closed. This proposal is prompted by a report that a Model DC-10 descended below the glide path after the automatic shutoff valve had closed, and the flight engineer's annunciation light was not noticed. This condition, if not corrected, could result in an airplane descending below the glide slope and consequently contacting the ground prior to reaching the runway.

DATES: Comments must be received no later than June 24, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-89-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801, ATTN: Group Leader, MD-11/DC-10 and DC-3/-8, Service Change Operations, Mail Code 73-30. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue S.W., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Kevin S. Kuniyoshi, Aerospace Engineer, LAACO, ANM-131L, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California; telephone (213) 988-5337.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-89-AD." The post card will be date/time stamped and returned to the commenter.

Discussion: The FAA has received a report that a Model DC-10 series airplane descended below the glide path during landing approach. This instrument approach was made using the number 2 autopilot. The airplane involved in this incident had been modified in accordance with AD 90-13-07, Amendment 39-6616 (55 FR 23892, June 13, 1990), which requires the installation of a hydraulic system number 3 automatic shutoff valve. (This installation is described in McDonnell Douglas DC-10 Service Bulletin 29-128, dated February 22, 1990.) Investigation revealed that the hydraulic system number 3 automatic shutoff valve had closed and the "HYD SYS 3 ELEV OFF" light on the flight engineer's annunciator panel illuminated but was not noticed immediately. (In this phase of flight, the flight engineer monitors instruments on the pilot's instrument panel.) The airplane continued to a safe landing. An unobserved indication that the hydraulic system number 3 shutoff valve has closed, if not corrected, could result in an airplane descending below the glide slope and consequently contacting the ground prior to reaching the runway.

The FAA has reviewed and approved McDonnell Douglas Service Bulletin 29-132, dated February 15, 1991, which describes a modification of the Master Caution Indicating System wiring which adds a wire between the flight engineer's annunciator panel and the warning and caution system logic controller unit. This modification will cause the master caution lights on the captain's and first officer's glare shield to illuminate simultaneously with the "HYD SYS 3 ELEV OFF" on the flight engineer's annunciator panel.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require modification in accordance with the service bulletin previously described.

There are approximately 428 McDonnell Douglas Model DC-10 and KC-10A (Military) series airplanes of the affected design in the worldwide fleet. It is estimated that 243 airplanes of U.S. registry would be affected by this AD, that it would take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. The cost of parts to accomplish this modification is estimated to be $70 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $57,105.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federal Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Applies to Model DC–10–10, –10F, –15, –30, –30F, –40, –40F, and KC–10A (Military) series airplanes, modified in accordance with AD 90–13–07 (ref: McDonnell Douglas DC–10 Service Bulletin 29–128, dated February 22, 1990), certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent an unobserved indication that the hydraulic system number 3 shutoff valve has closed, accomplish the following:

A. Within 6 months after the effective date of this AD modify the Master Caution Warning System by installing a wire in accordance with paragraph 2, Accomplishment Instructions, of McDonnell Douglas DC–10 Service Bulletin 29–132, dated February 15, 1991.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Avionics Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801, ATTN: Group Leader, MD–11/DC–10 and DC–3/–8, Service Change Operations, Mail Code 73–30. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

Issued in Renton, Washington, on April 23, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 91–10367 Filed 5–1–91; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 770, 771, 772, 773, 774, and 775

[Docket No. 910485–1085]

Revisions to the Special License Procedures; Elimination of Supplement No. 1 to Part 773 and Creation of a Certified Exporter and Consignee Procedure

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Proposed rule, with request for comments.

SUMMARY: The Bureau of Export Administration (BXA) is proposing to amend the Export Administration Regulations (EAR) to establish a Certified Exporter and Consignee Procedure (CEC) that would authorize exports and reexports of certain commodities by approved parties in the United States and abroad. The Certified Exporter and Consignee Procedure is an individualized special licensing mechanism developed in response to the rapidly changing export control environment.

This rule also provides notice of BXA's intention to eliminate Supplement No. 1 to part 773, which lists commodities excluded from certain special license procedures. In addition, this rule proposes to amend General License G–TEMP by removing the special restrictions for commodities listed in Supplement No. 1 to part 773 (§ 771.22(c)(2)(iv)).

This rule would implement the President's November 16, 1990, commitment to increase the threshold for Distribution Licenses.

DATES: Comments must be received by June 17, 1991.

ADDRESSES: Written comments (six copies) should be sent to: Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Gene Petersen-Beard, Office of Export Licensing, Bureau of Export Administration, Department of Commerce, Washington, DC 20230, Telephone: (202) 377–4196.

SUPPLEMENTARY INFORMATION:

Background

Since 1968, the Commerce Department has permitted exports of controlled items without review of individual transactions by the United States Government through a distribution license procedure (DL). The DL is issued to approved U.S. exporters and permits the export of a pre-approved list of commodities to a pre-approved list of foreign consignees (often a distributor or "middleman"). DL holders are required to maintain a rigorous internal control program, including training of company employees, record retention, and special procedures for processing orders. DL holders are also required to train and audit their foreign consignees. There are limitations to the use of the DL. DL exports are not permitted to controlled countries or to countries embargoed for foreign policy purposes (e.g., Cuba, Libya, Iran, etc.). In addition, the Export Administration Regulations prohibit the shipment under the DL procedure of items listed in Supplement No. 1 to part 773.

Consistent with the Presidential directive in the memorandum of disapproval of November 16, 1990 [1], the Bureau of Export Administration proposes revising the Distribution license procedure and implementing a new Certified Exporter and Consignee procedure.

Revision to the Distribution License Procedure; Proposed Elimination of Supplement No. 1 to Part 773

Rapid changes in technology and export control policies have dated the list of excluded commodities in Supplement No. 1 to part 773. The Bureau of Export Administration will eliminate Supplement No. 1, thereby permitting the export of any controlled item under the Distribution license procedure, except supercomputers, commodities listed in Supplement No. 4 to part 773, commodities subject to short supply controls, nuclear, chemical/biological, and missile technology nonproliferation controls, and certain foreign policy controls. BXA will reevaluate DL applications to ensure that the only commodities approved for export are those that are consistent with

[1] The President's memorandum of disapproval of H.R. 4653, the Omnibus Export Amendments Act of 1990, was published in the Weekly Compilation of Presidential Documents Vol. 26, No. 46, November 19, 1990, p. 1836.

the exporter's line of business and market, and with the overall objectives of U.S. export controls.

In order to take advantage of the new commodity eligibility requirements, DL holders will be required to submit an amendment (Form BXA–685P) to the Office of Export Licensing (OEL), providing a description of the equipment they wish to export and listing the countries involved (including sales territories and approved consignees). The amendments must be submitted by a date that will be specified in the final rule or the exporter's DL privileges will lapse. Until each DL holder is given new authorization, Supplement No. 1 to part 773 will continue to apply to such DL holder and its approved foreign consignees. Once all DL holders have been authorized to export under the new procedure, BXA will eliminate Supplement No. 1 to part 773. Comments on this requirement are particularly encouraged.

Complementary System to the Distribution License Procedure; Certified Exporter and Certified Consignee Procedure

The Certified Exporter and Consignee (CEC) Procedure would authorize exports and reexports of commodities under an international marketing program for shipments within eligible destinations and for eligible recipients. This procedure would grant participating firms broad authorization to facilitate exports and reexports under a system of controls that are consistent with our national security and foreign policy interests. In addition, the procedure will permit smaller firms to ship to or for these reliable, participating firms with a minimum of paperwork.

Under the DL procedure, license holders are required to ship through or on behalf of an approved consignee to deliver goods to the ultimate end-user(s). The Certified Exporter and Consignee procedure will authorize Certified Exporters (CE) and Certified Consignees (CC) to export approved commodities directly to their customers within an approved sales territory. Shipments may be made only to customers that either the Certified Exporter or the Certified Consignee has determined to be eligible to receive products under this procedure. This determination will be based upon an enhanced internal control program, patterned after the existing DL internal control program. In addition, Certified Consignees will be authorized to designate suppliers in the United States and other countries to effect exports of products directly to the approved Certified Consignee's location, without first obtaining U.S. export licenses in the name of the supplier.

Participation in the Certified Exporter and Consignee procedure is a privilege reserved for firms with a thorough knowledge of, and experience with, the Export Administration Regulations (EAR). Only firms that demonstrate the ability to adhere strictly to the requirements of the EAR (e.g., ability to maintain an effective Internal Control Program (ICP)) will be eligible to participate in this procedure. Applicants will have to establish their eligibility for the Certified Exporter and Consignee procedure by demonstrating their ability to assume the responsibilities involved in controlling and monitoring all of the activities that would take place under their authorization. In particular, applicants will be required to show that they have developed controls adequate to insure full compliance with this special licensing procedure and with all other provisions of the EAR.

Exporters and consignees interested in participating in this special licensing procedure must apply to the Office of Export Licensing (OEL). Applicants should include, in their submission, a description of all the commodities they wish to export and the countries where their customers are located. BXA will review each application to determine which commodities and countries are eligible for this special licensing procedure.

All commodities listed on the Commodity Control List (Supplement No. 1 to § 799.1 of the EAR) will be considered for eligibility for this procedure *except* the following:

(1) Supercomputers;
(2) Commodities that will be used outside of the countries listed in Supplement No. 2 to part 773 either directly or indirectly in any sensitive nuclear activity as described in § 778.3;
(3) Commodities listed in Supplement No. 4 to part 773, except for shipments to specific end-users that have been approved by the Office of Export Licensing;
(4) Commodities subject to short supply controls (part 777 of the EAR);
(5) Aircraft parts and accessories destined for Libyan, Iranian, or Syrian aircraft;
(6) Communications intercepting devices (§ 776.13);
(7) Crime control and detection equipment (§ 776.14);
(8) Commodities subject to regional stability controls (§ 776.16);
(9) Commodities related to the design, development, production, or use of missiles capable of delivering nuclear weapons (§ 776.18);
(10) Chemical weapons precursors and biological agents (§ 776.19);
(11) Chemical processing equipment and intermediates (§ 776.20);
(12) Commodities that will be used either directly or indirectly in the design, development, production, or use of missiles or in the design, development, production, stockpiling, or use of chemical or biological weapons (§ § 778.6 and 778.7, as newly designated in the proposal of March 13, 1991 (56 FR 10765);
(13) Commodities subject to nuclear nonproliferation controls (§ 778.2), except that the CEC limit for ECCN 1565A to countries identified in Supplement No. 3 to part 773 is 100 MFLOPS, not a Processing Data Rate of 2.000 million bits/sec.; and
(14) Other commodities specifically excluded or restricted by the Bureau of Export Administration in issuing the license.

Exports under the Certified Consignee procedure of foreign-made products that incorporate U.S.-origin parts and components above the *de minimus* levels indicated in § 776.12(b) of the EAR are also subject to the restrictions described above.

Only firms located within the United States are eligible to be approved as "certified exporters". In order to be eligible for approval as a "certified consignee", a firm must be located in Canada or in a country in Country Group T or V (except Afghanistan, Iran, Iraq, Syria, and the People's Republic of China). Approved sales territories for certified exporters and certified consignees will be limited to destinations located in Canada or countries in Country Group T or V (except Afghanistan, Iran, Iraq, Syria, and the People's Republic of China). Consideration may be given at a later date to allow participation to include currently proscribed countries that present a lesser strategic threat and that have adopted effective export safeguards, consistent with U.S. obligations in COCOM.

Certified consignees may designate, as suppliers, firms located in any country except for Country Group S or Z. These suppliers may ship directly to the certified consignee, provided that:

(1) The shipment is at the direction of the certified consignee;
(2) The supplier verifies that the authorization number of the certified consignee is valid; and
(3) The authorization number is indicated on all shipping documents.

Certified exporters and certified consignees may also designate suppliers in the U.S. or other countries within the suppliers territory and for the purpose of authorizing exports/reexports from these suppliers to customers located in the sales territories of the certified exporters/consignees. This type of drop shipment is permitted only if specifically authorized on the license of the certified exporter/consignee.

Exporters and consignees that are approved for the Certified Exporter and Consignee procedure will be required to maintain their eligibility by demonstrating that they have established and are following procedures that provide them with effective control over all exports and reexports (and other related activities) effected under their licenses. In addition to the special requirements for the Certified Exporter and Consignee procedure, approved parties will be subject to the special license limitations and conditions described in § 773.1, as well as all other relevant provisions of the EAR.

The Bureau of Export Administration specifically requests comments regarding the administration of the verification process required under § 773.4(f). Under this provision, parties designated by certified exporters or certified consignees as suppliers must themselves contact BXA to verify that their certified exporter's or certified consignee's license number represents a valid license. BXA will respond that a license remains valid. BXA has not yet determined whether the designated supplier may rely upon the verification for one shipment, multiple shipments under a purchase order, multiple shipments for 60 days or 180 days, or the remaining term of the license held by the certified exporter or certified consignee. In addition, BXA has not yet determined the information the designated supplier must provide BXA under the verification procedure of § 773.4

Rulemaking Requirements.

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves collections of information subject to the requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control number 0694–0005, 0694–0007, 0694–0010, and 0694–0015. This rule also imposes new recordkeeping requirements that have been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act. Public burden for the collection contained within the rulemaking is estimated to average from 25 to 50 hours. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestion for reducing this burden, to the Office of Security and Management Support, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: Paperwork Reduction Project—0694–XXXX).

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a foreign and military affairs function of the United States. This rule does not impose a new control. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

However, because of the importance of the issue raised by these regulations, this rule is being issued in proposed form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views. In particular, comments on the requirement for each DL holder to submit an amendment to retain eligibility are encouraged.

The period for submission of comments will close June 17, 1991. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Facility, room 4525, Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of export Administration Freedom of Information Officer, at the above address or by calling (202) 377–2593.

List of Subjects

15 CFR Part 770

Administrative practice and procedure, Exports.

15 CFR Parts 771, 772, 773, 774, and 775

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 770, 771, 772, 773, 774, and 775 of the Export Administration Regulations (15 CFR parts 730–799) are proposed to be amended as follows:

1. The authority citations for parts 770, 771, 772, 773, 774, and 775 are revised to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 et seq.), as amended, Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 et seq.); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990).

PART 770—[AMENDED]

2. Section 770.2 is amended by adding a definition of the term *Certified exporter and consignee procedure* immediately following the definition for *Canadian airline* to read as follows:

§ 770.2 Definition of terms.

* * * * *

Certified exporter and consignee procedure § 773.4 of this subchapter). A special procedures authorizing exports and reexports of certain commodities by approved parties in the United States and abroad. Parties must establish and maintain eligibility and assume responsibility for their activities under the license.

* * * * *

PART 771—[AMENDED]

3. Section 771.22 is amended by replacing the period at the end of paragraph (c)(2)(ii) with the words "; and", by replacing the words "; and" at the end of paragraph (c)(2)(iii) with a period, and by removing paragraph (c)(2)(iv).

PART 772—[AMENDED]

4. Section 772.2(b) is amended by adding a new paragraph (b)(5) (formerly reserved) to read as follows:

§ 772.2 Type of validated licenses.

* * * * *

(b) * * *

(5) *A "Certified Exporter and Consignee Procedure* (CEC)" (§ 773.4 of this subchapter) authorizes exports and reexports of certain commodities by or at the direction of approved parties in the United States and abroad.

PART 773—[AMENDED]

5. Section 773.3 is amended by revising paragraph (b)(1); by redesignating paragraphs (e)(1)(viii) through (e)(1)(xiii), as paragraphs (e)(1)(x) through (e)(1)(xv), respectively; by adding new paragraphs (e)(1)(viii) and (e)(1)(ix); and by revising paragraphs (e)(2)(v) to read as follows:

§ 773.3 Distribution license.

* * * * *

(b) * * *

(1) *Commodities.* All commodities listed in the Commodity Control List (Supplement No. 1 to § 799.1 of this subchapter) will be considered for eligibility under the Distribution License procedure, except those listed in paragraphs (b)(1)(i) through (b)(1)(xv) of this section. The following ineligible commodities require an individual validated license or written reexport authorization, except when the commodities are otherwise eligible for a general license or permissive reexport authorization.

(i) Supercomuters;

(ii) Commodities that will be used outside of the countries listed in Supplement No. 2 to part 773 either directly or indirectly in any sensitive nuclear activity as described in § 778.3 of this subchapter;

(iii) Commodities listed in Supplement No. 4 to part 773, except where shipments to a specific end-user have been approved by the Office of Export Licensing;

(iv) Commodities subject to short supply controls (see part 777 of this subchapter);

(v) Aircraft parts and accessories destined for Libyan, Iranian, or Syrian aircraft, whenever located;

(vi) Communications intercepting devices (see § 776.13 of this subchapter);

(vii) Crime control and detection equipment (see § 776.14 of this subchapter);

(viii) Commodities subject to regional stability controls (see § 776.16 of this subchapter);

(ix) Commodities related to the design, development, production, or use of missiles capable of delivering nuclear weapons (see § 776.18 of this subchapter);

(x) Chemical precursors and biological agents (see § 776.19 of this subchapter);

(xi) Chemical processing equipment and intermediates (see § 776.20 of this subchapter);

(xii) Commodities that will be used either directly or indirectly in the design, development, production, or use of missiles or in the design, development, production, stockpiling, or use of chemical or biological weapons (see §§ 778.6 and 778.7 [1]);

(xiii) Commodities subject to nuclear nonproliferation controls (see § 778.2 of this subchapter), except that the Distribution License limit for ECCN 1565A to countries identified in Supplement No. 3 to part 773 is 100 MFLOPS, not a Processing Data Rate of 2,000 million bits/sec. (Exporters should consult the Reason for Control paragraphs on the Commodity Control List to determine whether nuclear nonproliferation controls apply.);

(xiv) Other commodities specifically excluded or restricted by the Office of Export Licensing in issuing the license; and

(xv) Commodities listed on Supplement No. 1 to part 773 of this subchapter (except as authorized by a footnote in Supplement No. 1), until the Distribution License holder has requested an amendment to the distribution license by submitted a Form BXA–685P (Request for Amendment Action), along with a description of the commodities intended for export and a list of the countries involved (including sales territories of approved consignees), and the amendment has been approved by the Office of Export Licensing. The amendment must be submitted to OEL by a date to be specified in the final rule, or the exporter's DL privileges will lapse. The Bureau of Export Administration will review each amendment request in accordance with the eligibility restrictions listed in § 773.4(c)(1)(i) of this subchapter.

* * * * *

(e) * * *

(1) * * *

(viii) A system for assuring compliance with controls over commodities restricted under the Missile Technology Control regime (see § 776.18 of this subchapter);

(ix) A system for assuring compliance with controls over commodities restricted udner the Chemical and Biological Weapons regime (see § 776.19 and § 776.20 of this subchapter);

* * * * *

(2) * * *

(v) A system for complying with the nuclear, missile, or chemical and biological restrictions under the procedure.

* * * * *

6. Section 773.4 (formerly reserved) is added to read as follows:

§ 773.4 Certified exporter and consignee procedure.

A Certified Exporter and Consignee Procedure (CEC) is established that authorizes exports and reexports of certain commodities by approved parties in the United States and abroad. Only firms that demonstrate the ability to adhere to the CEC requirements and maintain an effective Internal Control Program (ICP) may participate. Parties must establish and maintain eligibility and assume responsibility for their activities under the license. The CEC procedure is subject to the limitations set forth in § 773.1.

(a) *Eligible activities under the procedure.* (1) Certified exporters may:

(i) Export commodities directly to customers within their sales territory. To be eligible, all commodities and

[1] Note: As added in the proposed rule of March 13, 1991 (56 FR 10765). BXA expects shortly to publish a final rule adding these sections.

destinations must be authorized under the CEC procedure. The certified exporter is responsibile for assessing the eligibility of its customers in accordance with the standards set forth in §773.4(c)(4).

(ii) Export to certified consignees in eligible countries when the certified consignee states that the country is part of an authorized sales territory. These transactions must be cleared in accordance with the vertification procedures specified in § 773.4(f)(1).

(2) Certified consignees may:

(i) Reexport approved commodities from their inventory to eligible customers within their approved sales territory. The certified consignee is responsible for assessing the eligibility of its customers in accordance with § 773.4(c)(4). These commodities may have been received by the certified consignee under any type of license: individual validated license (IVL), Special License, General License, or as provided in paragraph (a)(3) of this section.

(ii) Reexport approved commodities from their inventory to other certified consignees, in eligible countries when the certified consignee states that the country is part of an authorized sales territory. These transactions must be cleared in accordance with the verification procedures of § 773.4(f)(1), unless the certified consignee is located in the authorized sales territory of the certified consignee making the shipment.

(3) *Designation of suppliers.* (i) Certified consignees may designate suppliers in the United States or other countries for the purpose of authorizing the export or reexport of controlled commodities from those locations directly to the certified consignee. These transactions must be cleared in accordance with the verification procedures in § 773.4(f)(1).

(ii) Certified exporters and certified consignees may designate suppliers in the U.S. and other countries for the purpose of authorizing the export or reexport from those locations to a customer designated by a certified exporter or certified consignee and located in the sales territory of the certified exporter or certified consignee. This type of drop shipment must be specifically authorized on the license. The applicant for this authorization must describe in the license application the controls in place for these transactions. These transactions must be cleared in accordance with the verification procedures in § 773.4(f)(1).

(iii) A party is designated as exporter or reexporter by a certified exporter or certified consignee when the certified exporter or certified consignee places an order with the party to be designated and informs the party that he is designated as exporter or reexporter under the certified exporter's or certified consignee's license and is authorized to export or reexport items described on the order to described destinations. Within this order, the certified exporter or certified consignee must also inform the party to be designated as exporter or reexporter of the party's responsibilities under § 773.4(f)(1) and the certified exporter's or certified consignee's license number plus a unique "transaction" number. The certified exporter or certified consignee need not provide such communications to OEL unless a specific request is made.

Note: Suppliers under this procedure become the exporter, and are responsible for export clearance and submission of Shipper's Export Declarations. The certified exporter or certified consignee, however, is responsible for assuring proper disposition of the goods.

(b) *Eligibility standards for participants.* An applicant must establish and maintain its eligibility to participate in the CEC program. Exporters and consignees who participate in the program must be deemed reliable by the Office of Export Licensing. The Office of Export Licensing will consider the following as evidence of the eligibility and reliability of the applicant:

(1) *Licensing experience.* (i) An established licensing history under the Distribution License procedure; or

(ii) Extensive experience under the Project License procedure or under IVL's provided an examination shows the applicant has established an effective internal control program for compliance within the Export Administration Regulations (15 CFR parts 730–799) and the terms or conditions of these licenses.

(2) *Previous record of compliance.* The Bureau of Export Administration will consider all relevant information in evaluating the applicant's reliability and previous record of compliance. Firms with a record of export-related violations, firms that fail to maintain appropriate records, or firms that hire individuals with such background, may be denied participation under the procedure. At a minimum, applicants that have a record of previous violations of U.S. export controls, or a lack of diligence in compliance with the Export Administration Regulations, will be required to show what corrective measures have been taken to prevent violations in the future. Failure to acknowledge or address violations or deficiencies will result in a denial of the application.

(3) *Internal control program.* All applicants must provide a copy of their written internal control program that takes into account each of the control elements specified in § 773.4(e), and information concerning their ability to implement and maintain the program in practice.

(c) *Eligible commodities, participants, destinations, and recipients—(1) Commodities.* All commodities listed in the Commodity Control List (Supplement No. 1 to § 799.1 of this subchapter) are eligible for export or reexport under the Certified Exporter and Consignee procedure, except those listed in paragraph (c)(1)(i) of this section. These ineligible commodities require an individual validated license or reexport authorization, except when the commodities are otherwise eligible for a general license or permissive reexport authorization.

(i) *Commodities not eligible for this procedure. (A) Supercomputers;*

(B) Commodities that will be used outside of the countries listed in Supplement No. 2 to part 773 either directly or indirectly in any senstive nuclear activity as described in § 778.3 of this subchapter;

(C) Commodities listed in Supplement No. 4 to part 773, except were shipments to a specific end-user have been approved by the Office of Export Licensing;

(D) Commodities subject to short supply controls (see part 777 of this subchapter);

(E) Aircraft parts and accessories destined for Libyan, Iranian, or Syrian aircraft, wherever located;

(F) Communications intercepting devices (see § 776.13 of this subchapter).

(G) Crime control and detection equipment (see § 776.14 of this subchapter);

(H) Commodities subject to regional stability controls (see § 776.16 of this subchapter);

(I) Commodities related to the design, development, production, or use of missiles capable of delivering nuclear weapons (see § 776.18 of this subchapter;

(J) Chemical precursors and biological agents (see § 776.19 of this subchapter);

(K) Chemical processing equipment and intermediates (see § 776.20 of this subchapter);

(L) Commodities that will be used either directly or indirectly in the design, development, production, or use of missiles or in the design, development, production, stockpiling, or use of

chemical or biological weapons (see §§ 778.6 and 7787.7 [2];

(M) Commodities subject to nuclear non-proliferation controls (see § 778.2 of this subchapter), except that the CEC procedure limit for ECCN 1565A to countries identified in Supplement No. 3 to part 773 is 100 MFLOPS, not a Processing Data Rate of 2,000 million bits/sec. (Exporters should consult the Reason for Control paragraphs on the Commodity Control List to determine whether nuclear nonproliferation controls apply.); and

(N) Other commodities especifically excluded or restricted by the Office of Export Licensing in issuing the license.

(ii) *Foreign-made products incorporating U.S.-origin parts and components.* Foreign-made products that incorporate U.S.-origin controlled parts or components above the de minimis levels indicated in § 776.12(b) of this subchapter are subject to the eligibility restrictions listed in paragraph (c)(1)(i) of this section.

(iii) *Determination of eligibility.* The Bureau of Export Administration determines which commodities are eligible for the Certified Exporter and Consignee procedure by reviewing each application for conformity with the commodity exclusions listed in paragraph (c)(1)(i) of this section and other relevant provisions of the Export Administration Regulations (15 CFR parts 730–799). Exporters interested in participating in the Certified Exporter and Consignee procedure should apply with the Office of Export Licensing in accordance with the procedures described in paragraph (d) of this section.

(2) *Eligible participants.* (i) *Certified exporters.* Only parties located within the United States are eligible to be approved as "Certified Exporters".

(ii) *Certified consignees.* Parties located in Canada and in Country Groups T and V, except Afghanistan, Iran, Iraq, Syria, and the People's Republic of China are eligible to be approved as "Certified Consignees".

(3) *Eligible destinations.* (i) *Sales territories.* Certified exporters and certified consignees may request authorization to export or reexport approved commodities to those eligible countries in which they are actively pursuing sales. Countries eligible for a sales territory include countries in Country Groups T and V except, Afghanistan, Iran, Iraq, Syria, and the People's Republic of China.

[2] Note: As added in the proposed rule of March 13, 1991 (56 FR 10765). BXA expects shortly to publish a final rule adding these sections.

(ii) *Sourcing territories.* Certified exporters and certified consignees may designate suppliers worldwide, except those located in Country Group S or Z, to supply approved commodities under the provisions of § 773.4(a)(3).

(4) *Eligible customers.* Certified exporters and certified consignees are responsible for determining the eligibility of their customers to receive approved commodities under this procedure. The following customers are not eligible to receive products under the CEC procedure:

(i) Denied parties;

(ii) Parties engaged either directly or indirectly in any nuclear activity when located outside countries listed in Supplement No. 2 or Supplement No. 3 to part 773. (See § 773.3(a)(2) for definition of "nuclear end use".);

(iii) Military and police entities in South Africa. Government entities enforcing apartheid in South Africa are not eligible to receive computers, computer related equipment, software, or goods to service or manufacture computers. (See Supplement No. 2 to part 785 of this subchapter for a partial listing of military and police entities.); and

(iv) Parties fitting the high diversion risk profile set forth in § 773.3(e)(1)(ix).

(d) *Application procedures*—(1) *Prior consultation for new applicants.* The preparation of the initial application for this procedure requires a substantial amount of work by the applicant. Since strong evidence of reliability is required for approval, the applicants should consult with the Special Licensing Branch of the Office of Export Licensing before preparing and submitting their applications.

(i) *Examination of reliability.* New applicants may be required to cooperate in pre-license reviews to establish evidence of the party's credentials and reliability to participate in this CEC procedure. The Office of Export Licensing may, at its option, accomplish such examinations by conducting an on site review.

(ii) *For Certified Consignees.* In addition to the previously mentioned option, the Office of Export Licensing may consider other evidence of reliability such as reviews submitted by a certified exporter, or other authorized independent parties. Such reviews may be accepted in lieu of an on site review by the Office of Export Licensing, where a business relationship exists between two parties.

(2) *Submission procedure.* Each submission under this procedure shall include the following:

(i) *Application form.* Applicants for certified exporter status must submit Form BXA–622P, Application for Export License. Applicants for certified consignee status must submit Form BXA–699P, Request for Reexport Authorization;

(ii) *Comprehensive narrative statement.* A comprehensive narrative statement must be included in the submission. This statement shall describe:

(A) How the applicant meets the eligibility standards set forth in § 773.4(b). Applicants filing for an extension of their validity period must describe their continued eligibility for participation in light of the eligibility standards in § 773.4(b);

(B) The applicant's proposed utilization of the procedure, including: A description of the business activity of the applicant, the estimated annual volume of exports or reexports, and the relationships to, and primary activities of, the various types of customers with whom the applicant expects to deal;

(iii) A list of the products, identified by Export Control Commodity Number (ECCN) and paragraph within the ECCN, that the applicant proposes to sell;

(iv) A list of countries to which the applicant proposes to sell under the license;

(v) *Internal control program.* Applicants must submit a copy of their internal control program that incorporates the elements set forth in § 773.4(e);

(vi) *Certifications.* All applications must certify that the applicant will do the following:

(A) Comply with all applicable provisions of the Export Administration Regulations (15 CFR parts 730–799) and particularly with § 773.4;

(B) Waive those confidentiality rights under section 12(c) of the Export Administration Act, as amended, necessary to allow the Office of Export Licensing to either confirm or deny the current validity of the authorization (see § 773.4(f)(1) for verification procedures); and

(C) Permit on-site reviews by the Office of Export Licensing.

(3) *Validity period.* A license is valid for 4 years and may be extended for additional 4 year periods as long as the applicant can demonstrate ongoing activities under the license. The initial two-years of the authorization will be considered a probationary period. During this interval, the Office of Export Licensing may require certified exporters or certified consignees to conduct training programs or on-site reviews of their major customers. Such

requirements will be specified at the time the license is approved.

(4) *Changes in fact.* To add commodities or sales territories or to modify the narrative statement, the licensee must submit a letter request to this effect. If the licensee's name changes, a new application must be submitted that satisfies the requirements of this paragraph (d).

(e) *Internal control program.* Each applicant under the certified exporter and consignee procedure is required to have an internal control program (ICP) in place to ensure compliance with all conditions of the license and the Export Administration Regulations. The applicant must submit a copy of its internal control program for evaluation with its application. The ICP must include the following elements:

(1) Clear statement of corporate policy communicated to all levels of the firm involved in export and/or reexport sales, traffic, and related functions emphasizing the importance of compliance;

(2) Identification of positions (and maintenance of current listing of individuals occupying the positions) in the license holder firm responsible for compliance;

(3) A system for timely receipt, verification of receipt, and distribution of the Table of Denial Orders (TDO), the list (where appropriate) of South African entities enforcing apartheid (as defined in Supplement No. 1 to part 785 of this subchapter), and other regulatory material necessary to ensure compliance;

(4) A system for screening orders/shipments to customers against the TDO that covers servicing, sales, and customer training;

(5) A system for assuring compliance with the limits on delivery to nuclear end uses/users;

(6) A system for assuring compliance with controls over commodities restricted under the Missile Technology Control regime (see § 776.18 of this subchapter);

(7) A system for assuring compliance with controls over commodities restricted under the Chemical and Biological Weapons regime (see § 776.19 and § 776.20 of this subchapter);

(8) A system for assuring compliance with controls over commodities that will be used either directly or indirectly in the design, development, production, or use of missiles or in the design, development, production, stockpiling, or use of chemical or biological weapons (see §§ 778.6 and 778.7); [3]

(9) A system for assuring compliance with product and country restrictions, including controls over direct shipments to customers and over reexports;

(10) A system for screening customers against the diversion risk profile described in § 773.3(e)(1)(ix);

(11) An order processing system affixing responsibility for all required internal control reviews;

(12) A system for the conduct of internal compliance reviews;

(13) A continuing program for informing and educating staff of applicable regulations, limits and restrictions of the license;

(14) A system for recordkeeping as required under §§ 773.4(g)(2) and 787.13 of this subchapter; and

(15) A system for notifying the Office of Export Licensing promptly if the license holder has knowledge that a customer is not in compliance with the terms of the license.

(f) *Verification and clearance procedures.*—(1) Verification of authorization.

(i) Firms designated by certified exporters or certified consignees who are relying on the certified exporter's or certified consignee's authorization to export or reexport, must verify that the certified consignee's authorization number is valid. This authorization number must be indicated on all shipping documents.

(ii) Firms designated by a certified exporter or certified consignee, in accordance with § 773.4(a)(3)(ii), to export or reexport to a customer designated by such certified exporter or certified consignee and located in the authorized sales territory of the certified exporter or certified consignee, must verify that the certified exporter's or certified consignee's authorization number is still valid. The number must be indicated on all sales documents.

(iii) To verify the authorization number, the supplier must contact the Special Licensing Branch at (202) 377–3287, by facsimile at (202) 377–4094, or by writing to OEL, P.O. Box 273, Washington, DC 20044, attention: Certified Exporter and Consignee Procedure. Verification by OEL may include assignment of a discrete number code and may be valid only for a limited time.

(2) *Destination Control Statement.* Licensees must advise their customers of U.S. laws pertaining to prohibited reexports and prohibited in-country transfers. This notification may be transmitted as a part of a contractual agreement or may appear as a statement on the invoice.

(i) The notification shall read as follows:

> These commodities were authorized for (specify export or reexport) under a special U.S. export licensing procedure. They may not be reexported without prior authorization from U.S. authorities. Change of title or control within the importing country may also require approval when the new recipient is engaged in proliferation activities or when there is reason to believe the recipient will not comply with applicable restrictions. Sales to parties who have been denied U.S. export privileges are prohibited.

(ii) The licensee must obtain a written acknowledgement of receipt of this statement on transactions that require end-user approval because they involve products listed on Supplement No. 4 to part 773.

(iii) *Exemptions.* This destination control statement is not required on shipments to:

(A) Customers located in countries listed in Supplement No. 2 or 8 to part 773;

(B) Certified consignees;

(C) Government agencies; and

(D) Retail establishments. (For purposes of this § 773.4(f)(2)(iii)(D), a retail establishment is defined as a facility selling from stock by means of over-the-counter transactions, mail order transactions, or telephone call transactions).

(iv) When exports from the United States are exempt under paragraph (f)(2)(iii) of this section, an appropriate Destination Control Statement as required by § 786.6 of this subchapter shall be substituted.

(3) *Permissive reexports.* Approved consignees may make permissive reexports in accordance with § 774.2 of this subchapter, provided that accurate records are maintained.

(g) *Supporting documentation and recordkeeping requirements.* (1) *Additional documentation.* Additional support documentation, such as an Import Certificate (IC), is not required for shipments under the CFC procedure, except when the export or reexport is destined to Switzerland or Yugoslavia.

(2) *Recordkeeping requirements.* Approved participants must maintain records in accordance with the provisions of § 787.13 of this subchapter. In addition, the following records must be maintained:

(i) A current copy of the licensee's internal control programs; and

[3] **Note:** As added in the proposed rule of March 13, 1991 (56 FR 10765). BXA expects shortly to publish a final rule adding these sections.

(ii) A current copy of the Export Administration Regulations, including the Table of Denial Orders.

(3) *Availability of records.* All records retained under this provision shall be made available in accordance with § 787.13 of this subchapter, either through inspection on-site or by forwarding the records upon request.

(h) *Office of export licensing review program for participants.* (1) *On-site reviews.* All certified parties are subject to reviews by the Office of Export Licensing. Such reviews will be conducted at the discretion of the Office of Export Licensing and reasonable notice will be given to license holders in advance of such reviews. The reviews will involve interviews with officials familiar with, or responsible for, compliance with the terms of the license, the inspection of records, and a review of the internal control mechanisms.

(2) *Desk audits.* A license holder may be required to submit information to the Office of Export Licensing, at any time, covering any aspect of the authorization granted under this procedure.

PART 774—[AMENDED]

7. Section 774.2 is amended by revising paragraph (e) to read as follows:

§ 774.2 Permissive reexports.[2]

* * * * *

(e) Reexports as provided by the terms of the Project License procedure (see § 773.2(g) of this subchapter), the Distribution License procedure (see § 773.3(j) of this subchapter), or the Certified Exporter and Consignee Procedure (see § 773.4(f) of this subchapter).

* * * * *

PART 775—[AMENDED]

8. Section 775.2(9) is amended to add the phrase "Certified Exporter and Certified Consignee Procedure (§ 774.3 of this subchapter)." immediately before the phrase "Service Supply License (§ 773.7),".

Dated: April 24, 1991.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 91–10105 Filed 5–1–91; 8:45 am]

BILLING CODE 3510-DT-M

[2] See § 774.9 for effect on foreign laws.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI–139–86]

RIN 1545–AJ51

Discounted Unpaid Losses

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the discounting of unpaid losses of insurance companies for Federal income tax purposes. Changes to the applicable law were made by the Tax Reform Act of 1986. The regulations affect insurance companies and provide them with guidance needed to comply with the changes to the law.

DATES: Written comments must be received by July 31, 1991. Requests to speak (with outlines of oral comments) at a public hearing scheduled for Tuesday, September 24, 1991, at 10 a.m., must be received by July 31, 1991. See the notice of hearing published elsewhere in this issue of the **Federal Register**.

ADDRESSES: Send comments and requests to speak (with outlines of coral comments) at the public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (FI–139–86), Room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Katherine A. Hossofsky of the Office of the Assistant Chief Counsel (Financial Institutions and Products), (202) 566–4336 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) to provide rules relating to the discounting of unpaid losses under section 846 of the Internal Revenue Code of 1986. The proposed regulations reflect the addition of section 846 to the Code by section 1023(c) of the Tax Reform Act of 1986 (100 Stat. 2399). Guidance on certain issues relating to section 846 was provided in Notice 88–100, 1988–2 C.B. 439.

Explanation of Provisions

The deduction for losses incurred provided to property and casualty insurance companies under section 832(b)(5) of the Code takes into account changes in the amount of discounted unpaid losses. In addition, section 807(c) requires life insurance companies to discount unpaid losses (other than losses on life insurance contracts) deductible under sections 807(c)(2) and 805(a)(1). Section 846 provides rules for the discounting of unpaid losses. These proposed regulations provide guidance on certain issues arising under section 846.

Requirements for Election To Use Own Experience

Although taxpayers generally must discount unpaid losses using loss payment patterns determined by the Secretary, section 846(e) allows a taxpayer to elect to discount unpaid losses using its own historical loss payment pattern. Under section 846(e), this payment pattern must be determined using the loss payment pattern on the most recent annual statement filed before the beginning of the accident year for which the payment pattern is computed. The election is made separately for each determination year (1987 and each fifth calendar year thereafter) and applies to all of the taxpayer's lines of business. Section 846(e)(4) directs the Secretary to provide that the election is not available for a line of business for which the taxpayer does not have sufficient historical experience to determine a loss payment pattern.

Beginning with the 1992 determination year, the proposed regulations provide that a taxpayer has sufficient historical experience for a line of business if, on the most recent annual statement filed before the beginning of the determination year, the taxpayer reports unpaid losses for each accident year for which unpaid losses for that line are required to be separately reported on that annual statement. Unless unpaid loss information for each of these accident years is provided on the most recent annual statement filed before the determination year, it would be necessary to use assumptions other than historical experience in order to compute payment patterns. The use of such assumptions is not permitted because section 846 provides for discounting on the basis of historical experience, not on the basis of actuarial predictions of the rate at which losses will be paid.

For the 1987 determination year, the regulations provide that a taxpayer has sufficient historical experience for a line of business if the taxpayer reports written premiums for at least the number of accident years for which unpaid losses for that line are required to be separately reported on the annual

statement. Because a taxpayer may write premiums for several years before having unpaid losses relating to those premiums, this rule, taken from Notice 88–100, does not ensure the availability of unpaid loss information for each of those accident years. Thus, the rule is not adopted for determination years after 1987.

Notice 88–100 also required that the amount of unpaid losses that a taxpayer reports on its annual statement for a line of business be equal to or greater than the amounts reported by at least 10% of all other companies that report unpaid losses for that line of business. The regulations do not adopt this rule because of its potentially adverse impact on small companies and because determination of the 10th percentile threshold amount was unduly burdensome for taxpayers.

Use of Composite Schedule in Certain Cases

The proposed regulations generally provide for application of a composite schedule of discount factors to unpaid losses of a line of business for which the Commissioner has not published discount factors. In certain cases, however, the regulations specify that other factors may, or must, be applied to these losses. For example, reinsurance allocated to the underlying line of business on the annual statement must be discounted using discount factors applicable to the underlying line.

Fresh Start

The proposed regulations provide rules relating to the computation of the "fresh start" provided by section 1023(e)(3) of the Tax Reform Act of 1986. The fresh start relieves a taxpayer from taking into account the difference between undiscounted and discounted losses as of the end of the last tax year beginning before January 1, 1987. However, under section 1023(e)(3)(B) of the Act, the fresh start does not apply to any reserve strengthening in a tax year beginning in 1986. The regulations provide rules for the determination of the amount that must be included in income for the first tax year beginning after December 31, 1986, as a result of reserve strengthening.

The regulations adopt, with certain modifications, the test of Notice 88–100 for determining the existence of reserve strengthening. Under the regulations, this test is applied separately to each unpaid loss reserve. An unpaid loss reserve is the aggregate of the unpaid loss estimates for losses incurred (whether or not reported) in an accident year of a line of business. In general, the test is applied by comparing the amount of an unpaid loss reserve as of the end of a tax year beginning in 1986 with the amount that was in the same reserve at the end of the immediately preceding tax year, taking into account loss payments made during the 1986 tax year.

Applying the test for reserve strengthening to each unpaid loss reserve avoids significant compliance and administrative burdens. Because taxpayers must report unpaid losses to state regulators as a reserve for aggregated loss estimates, not as a list of estimates for each separate loss, a test applied to each separate loss would require taxpayers to use unreported data to trace each loss payment made during the 1986 tax year to the initial estimate of the underlying loss.

Because the test is applied to each unpaid loss reserve, rather than to each separate loss, the test does not take into account the fact that a particular loss payment may exceed, or be less than, the initial estimate of the amount of the loss for which payment was made. This may result in a failure to include, or an erroneous inclusion of, certain amounts in the computation of reserve strengthening for a particular reserve. For most unpaid loss reserves, however, any potential inaccuracies are likely to offset each other in the aggregate. Further, the absence of total accuracy is justified by the reduction in compliance and administrative burdens.

The test described above is not applied to determine reserve strengthening in the case of reserves for the 1986 accident year (and, in the case of certain fiscal year taxpayers, reserves for the 1987 accident year). If the test were applied to those reserves, it would treat as reserve strengthening any amount added to the reserves for losses incurred in a tax year beginning in 1986. Rather, the proposed regulations identify reserve strengthening as the excess (if any) of a reserve for the 1986 (or 1987) accident year, at the end of the last tax year beginning in 1986, over a hypothetical reserve for that accident year. The hypothetical reserve is computed using the same assumptions (other than the assumed interest rates, if any) used to compute the 1985 accident year reserve for the relevant line of business. Under the regulations, there can be no reserve strengthening or weakening of a 1986 (or 1987) accident year reserve if no 1985 accident year reserve was established for the relevant line of business.

To simplify the reserve strengthening rules of Notice 88–100, the regulations drop the requirement that strengthenings be allocated to one of three categories and provide less complex rules relating to the interaction between reinsurance transactions and reserve strengthening.

Notice 88–100

When the proposed regulations become effective, sections II, III, and VI of Notice 88–100, 1988–2 C.B. 439, become obsolete.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of the rules will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably an original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. Because the Treasury Department expects to issue final regulations on this matter as soon as possible, a public hearing will be held at 10 a.m., on September 24, 1991, in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC 20224. See notice of hearing published elsewhere in this issue of the **Federal Register.**

Drafting Information

The principal author of these regulations is William L. Blagg of the Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. Other personnel from the Service and Treasury Department participated in their development.

List of Subjects in 26 CFR 1.801–1 through 1.832–7T

Income taxes; Insurance companies.

Proposed Amendments to the Regulations

For the reasons set forth in the preamble, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * Sections 1.846–1 through 1.846–3 also issued under 26 U.S.C. 846. Section 1.846–3 also issued under sec. 1023(e), Public Law 99–514, 100 Stat. 2404.

Par. 2. Part 1 is amended by adding §§ 1.846–1 through 1.846–3 to read as follows:

§ 1.846–1 Application of discount factors.

(a) *In general*—(1) *Rules.* A separate series of discount factors is computed for, and applied to, undiscounted unpaid losses attributable to each accident year of each line of business. See paragraph (b) of this section for rules relating to applicable discount factors and § 1.846–3(b) for guidance relating to discount factors applicable to accident years prior to the 1987 accident year. Once a taxpayer applies any part of a series of discount factors to losses attributable to an accident year of a line of business, that series must be applied without change to discount those losses from one tax year to the next until the losses are completely paid. For example, the discount factors cannot be changed to reflect a taxpayer's actual experience with claims incurred during the year or to reflect a subsequent redetermination of an interest rate.

(2) *Examples.* The following examples illustrate the principles of this paragraph (a):

Example 1. A taxpayer discounts unpaid losses attributable to all accident years prior to 1992 using discount factors published by the Commissioner. In 1992, the taxpayer elects, under § 1.846–2, to compute discount factors using its own historical loss payment pattern. The taxpayer must continue to discount unpaid losses attributable to pre-1992 accident years using the discount factors published for those accident years by the Commissioner.

Example 2. On its annual statements through 1987, a taxpayer did not allocate proportional reinsurance unpaid losses to the line of business being reinsured. Beginning with the 1988 annual statement, the taxpayer did so allocate those losses. The taxpayer must continue to discount the reinsurance unpaid losses attributable to pre-1988 accident years using discount factors applicable to unallocated reinsurance unpaid losses. (See paragraph (b)(3) of this section for rules relating to the application of discount factors to reinsurance unpaid losses.)

(b) *Applicable discount factors.*—(1) *In general.* Except as otherwise provided in section 846(f)(6) (relating to certain accident and health lines of business), in § 1.846–2 (relating to a taxpayer's election to use its own historical loss payment pattern), in this paragraph (b), or in other guidance published by the Commissioner in the Internal Revenue Bulletin—

(i) If the Commissioner has published discount factors for a line of business, a taxpayer must discount unpaid losses attributable to that line by applying those discount factors; and

(ii) If the Commissioner has not published discount factors for a line of business, a taxpayer must discount unpaid losses attributable to that line by applying those discount factors.

(2) *Title insurance company reserves.* The case reserves (known claim reserves) of a title insurance company are subject to the discounting rules of section 846 and the regulations thereunder. Unless the company has made a valid election under section 846(e) and § 1.846–2 that applies to these reserves, the reserves must be discounted using the "Miscellaneous Casualty" discount factors published by the Commissioner. Section 832(b)(8) provides rules for determining the discounted unearned premiums of a title insurance company.

(3) *Reinsurance business*—(i) *Accident years after 1987*—(A) *Proportional reinsurance.* For the 1988 accident year and subsequent accident years, unpaid losses for proportional reinsurance must be discounted using discount factors applicable to the line of business to which those losses are allocated as required on the annual statement.

(B) *Non-proportional reinsurance.* For the 1988 accident year and subsequent accident years, unpaid losses for non-proportional reinsurance must be discounted using composite discount factors, except as otherwise provided in guidance published by the Commissioner in the Internal Revenue Bulletin.

(ii) *Accident years before 1988*—(A) *Unallocated losses.* If on its annual statement a taxpayer does not allocate to the underlying line of business reinsurance unpaid losses that are attributable to the 1987 accident year or a prior accident year—

(*1*) Those losses must be discounted using composite discount factors; or

(*2*) If over 90% of all such unallocated losses of a taxpayer cover one underlying line of business, the taxpayer must discount all unallocated reinsurance unpaid losses attributable to the accident year using discount factors published by the Commissioner for the underlying line of business.

(B) *Allocated losses.* If on its annual statement a taxpayer allocates to the underlying line of business reinsurance unpaid losses that are attributable to the 1987 accident year or a prior accident year, those losses must be discounted using discount factors applicable to the underlying line of business.

(4) *International business.* The rules of paragraphs (b)(3)(ii) (*1*) and (*2*) of this section apply for any accident year in the case of unpaid losses representing international business.

(5) *Composite discount factors.* For purposes of the regulations under section 846, "composite discount factors" means the series of discount factors published annually by the Commissioner on the basis of the composite loss payment pattern described in section 846(d)(3)(E).

§ 1.846–2 Election by taxpayer to use its own historical loss payment pattern.

(a) *In general.* If a taxpayer has one or more eligible lines of business in a determination year, the taxpayer may elect to discount unpaid losses using its own historical loss payment pattern instead of the industry-wide pattern determined by the Secretary. A taxpayer making the election must use its own payment pattern in discounting unpaid losses for each line of business that is an eligible line of business in that determination year. The election applies to accident years ending with the determination year and to each of the four succeeding accident years. If a taxpayer makes the election for the 1987 determination year, the taxpayer also must use its own payment pattern to discount unpaid losses attributable to all accident years prior to 1987.

(b) *Eligible line of business*—(1) *In general.* A line of business is an eligible line of business in a determination year if, on the most recent annual statement filed by the taxpayer before the beginning of that determination year, the taxpayer reports unpaid losses for the line of business for at least the number of accident years that unpaid losses for that line of business are required to be separately reported on that annual statement.

(2) *Special rule for 1987 determination year.* A line of business is an eligible line of business in the 1987 determination year if, on the most recent annual statement filed by the taxpayer before the beginning of that determination year, the taxpayer reports written premiums for the line of business for at least the number of accident years that unpaid losses for that line of business are required to be separately reported on that annual statement.

§ 1.846-3 Fresh start and reserve strengthening.

(a) *In general.* Section 1023(e) of the Tax Reform Act of 1986 ("the 1986 Act") provides rules for computing fresh start, reserve strengthening, and the deduction for any increase in discounted unpaid losses for the first tax year beginning after December 31, 1986. For purposes of section 1023(e), a taxpayer must discount its unpaid losses as of the end of the last tax year beginning before January 1, 1987. The excess of undiscounted unpaid losses over discounted unpaid losses as of that time is not required to be included in income, except (as provided in paragraph (e) of this section) to the extent of any "reserve strengthening" in a tax year beginning in 1986. The exclusion from income of this excess is known as "fresh start." The amount of fresh start is, however, included in earnings and profits for the first tax year beginning after December 31, 1986.

(b) *Applicable discount factors*—(1) *Rule.* For purposes of section 1023(e) of the 1986 Act, a taxpayer discounts unpaid losses as of the end of the last tax year beginning before January 1, 1987—

(i) By using the same discount factors that are used in the immediately succeeding tax year to discount unpaid losses attributable to the 1987 accident year and prior accident years (see section 1023(e)(2) of the 1986 Act); and

(ii) By applying those discount factors as if the 1986 accident year were the 1987 accident year.

(2) *Example.* The following example illustrates the principles of this paragraph (b):

Example. X, a calendar year taxpayer, does not make a valid election in 1987 to use its own historical loss payment pattern. When X computes discounted unpaid losses for its last tax year beginning before January 1, 1987, the discount factor for AY + 0 published by the Commissioner in Rev. Rul. 87-34, 1987-1 C.B. 168, must be applied to unpaid losses attributable to the 1986 accident year; the discount factor for AY + 1 is applied to unpaid losses attributable to the 1985 accident year; etc.

(c) *Rules for determining reserve strengthening (weakening)*—(1) *In general.* A reserve strengthening (weakening) is an amount that, in a tax year beginning in 1986, was added to (subtracted from) an unpaid loss reserve. For purposes of section 1023(e)(3)(B) of the 1986 Act, reserve strengthening (weakening) must be determined separately for each unpaid loss reserve by applying the rules of this paragraph (c). Thus, for example, this determination is made without regard to the reasonableness of the amount of the unpaid loss reserve and without regard to the taxpayer's discretion, or lack thereof, in establishing the amount of the unpaid loss reserve. However, reserve strengthening for an unpaid loss reserve may not exceed the amount of the reserve, including any undiscounted strengthening amount, as of the end of the last tax year beginning before January 1, 1987. For purposes of this section, an "unpaid loss reserve" is the aggregate of the unpaid loss estimates for losses (whether or not reported) incurred in an accident year of a line of business.

(2) *Accident years after 1985*—(i) *In general.* Reserve strengthening (weakening) for an unpaid loss reserve for an accident year after 1985 is the amount by which that reserve at the end of the last tax year beginning in 1986 exceeds (is less than) a hypothetical unpaid loss reserve.

(ii) *Hypothetical unpaid loss reserve.* For purposes of this paragraph (c)(2), the term "hypothetical unpaid loss reserve" means a reserve computed for losses the estimates of which were included, at the end of the last tax year beginning in 1986, in the unpaid loss reserve for which reserve strengthening (weakening) is being determined. The hypothetical unpaid loss reserve must be computed using the same assumptions, other than the assumed interest rates in the case of reserves determined on a discounted basis for annual statement reporting purposes, that were used to determine the 1985 accident year reserve, if any, for the line of business for which the hypothetical reserve is computed. If there was no 1985 accident year reserve for that line of business, the hypothetical unpaid loss reserve is the reserve, at the end of the last tax year beginning in 1986, for which reserve strengthening (weakening) is being determined (and thus there is no reserve strengthening or weakening).

(3) *Accident years before 1986*—(i) *In general.* For each tax year beginning in 1986, reserve strengthening (weakening) for an unpaid loss reserve for an accident year before 1986 is the amount by which the reserve at the end of that tax year exceeds (is less than)—

(A) The reserve at the end of the immediately preceding tax year; reduced by

(B) Claims and loss adjustment expenses paid ("loss payments") in the tax year beginning in 1986 with respect to losses that are attributable to the reserve. The amount by which a reserve is reduced as a result of reinsurance ceded during a tax year beginning in 1986 is treated as a loss payment made in that tax year.

(ii) *Exceptions.* Notwithstanding paragraph (c)(3)(i) of this section, reserve strengthening for an unpaid loss reserve for an accident year before 1986 does not include—

(A) An amount added to the reserve in a tax year beginning in 1986 as a result of a loss reported to the taxpayer from a mandatory state or federal assigned risk pool if the amount of the loss reported is not discretionary with the taxpayer; or

(B) An amount added to the reserve to take into account reinsurance assumed for a line of business during a tax year beginning in 1986, but only to the extent that the amount does not exceed the amount of a hypothetical reserve for the reinsurance assumed. The amount of the hypothetical reserve is determined using the same assumptions (other than the assumed interest rates) that were used to determine a reserve for reinsurance assumed for the line of business in a tax year beginning in 1985.

(iii) *Certain transactions deemed to be reinsurance assumed (ceded) in 1986.* For purposes of this paragraph (c)(3), reinsurance assumed (ceded) in the final quarter of a tax year beginning in 1985 is treated as assumed (ceded) during the immediately succeeding tax year if the appropriate unpaid loss reserve is not adjusted to take into account the reinsurance until that immediately succeeding tax year.

(d) *Section 845.* Any reinsurance transaction that has as one of its purposes the avoidance of the reserve strengthening limitation is subject to section 845.

(e) *Treatment of reserve strengthening.* The fresh start provision of section 1023(e)(3)(A) of the 1986 Act does not apply to reserve strengthenings. Thus, reserve strengthenings must be included in income and, therefore, included in earnings and profits for the first tax year beginning after December 31, 1986. The amount that a taxpayer must include in income for its first tax year beginning after December 31, 1986, as a result of reserve strengthening is equal to the excess (if any) of—

(1) The sum of each reserve strengthening multiplied by the difference between 100% and the discount factor that, under paragraph (b) of this section, is applicable to the unpaid loss reserve to which the strengthening was made; over

(2) The sum of each reserve weakening multiplied by the difference between 100% and the discount factor that, under paragraph (b) of this section, is applicable to the unpaid loss reserve from which the weakening was made.

(f) *Examples.* The following examples illustrate the principles of this section. For purposes of these examples, it is assumed that the taxpayers are property and casualty insurance companies that in 1987 did not elect to use their own historical loss payment patterns.

Example 1. As of the end of 1985, X, a calendar year taxpayer, had undiscounted unpaid losses of $1,000,000 in the workers' compensation line of business for the 1984 accident year. The same reserve had undiscounted unpaid losses of $900,000 at the end of 1986. During 1986, X's loss payments for this reserve were $300,000. Accordingly, under paragraph (c)(3)(i) of this section, X has a reserve strengthening of $200,000 ($900,000−[$1,000,000−$300,000]).

This was X's only reserve strengthening or weakening. Thus, under paragraph (e) of this section, for 1987 X must include in income $54,361.40 ($200,000×(100%−72.8193%])−0. The factor of 72.8193% is the AY+2 factor from the workers' compensation series of discount factors published in Rev. Rul. 87–34, 1987–1 C.B. 168.

Example 2. The facts are the same as in *Example 1*, except that X's 1986 loss payments for the reserve were $1,100,000. If only paragraph (c)(3)(i) of this section were applied, X would have a $1,000,000 reserve strengthening ($900,000−[$1,000,000−$1,100,000]). Under paragraph (c)(1) of this section, however, the amount of reserve strengthening for the reserve is limited to the amount of the reserve at the end of 1986. Accordingly, X has a reserve strengthening of $900,000 and for 1987 must include in income $244,626.30 ($900,000×(100%−72.8193%]).

Example 3. As of the end of 1985, Y, a calendar year taxpayer, had undiscounted unpaid losses of $1,000,000 in the auto physical damage line of business for the 1985 accident year. The same reserve included undiscounted unpaid losses of $600,000 at the end of 1986. During 1986, Y had loss payments of $300,000 for the reserve. Under paragraph (c)(3)(i) of this section, Y has a $100,000 reserve weakening ($600,000−[$1,000,000−$300,000]).

Under paragraph (e) of this section, the only effect of the reserve weakening is to reduce the amount that Y is required to include in income as a result of any strengthening of another reserve.

Example 4. The facts are the same as in *Example 1* except that X also has a $100,000 reserve weakening for the 1985 accident year in its auto physical damage line of business. Under paragraph (b) of this section, the reserve discount factor for this reserve is 93.3400, the AY+1 factor from the auto physical damage series of discount factors published in Rev. Rul. 87–34. Thus, under paragraph (e) of this section, the amount that X is required to include in income in 1987 is reduced by $6,660 ($100,000×(100%−93.3400%]), resulting in an amount of $47,761.40 ($54,361.40−$6,600).

Example 5. At the end of 1985, Z, a calendar year taxpayer, had undiscounted unpaid losses of $1,000,000 in the workers compensation line of business for the 1984 accident year. The same reserve included $1,100,000 of undiscounted unpaid losses at the end of 1986. During 1986, Z added $250,000 to the reserve to take into account reinsurance that Z assumed on September 1, 1986. Z had $230,000 of 1986 loss payments related to the reserve $60,000 of which was attributable to the reinsurance assumed by Z. In addition, on May 1, 1986, Z ceded $130,000 of the reserve to an unrelated reinsurer. Z wrote no new business in 1986 other than the reinsurance.

If only paragraph (c)(3)(i) of this section were applied, Z would have a $460,000 reserve strengthening ($1,100,000−[$1,000,000−($230,000+$130,000)]). Under paragraph (c)(3)(ii)(B) of this section, however, reserve strengthening does not include an amount added to a reserve to take into account reinsurance assumed during 1986. Accordingly, Z has a $210,000 reserve strengthening ($460,000−$250,000). If this is Z's only reserve strengthening or weakening, then the amount that Z must include in income for 1987 under paragraph (e) of this section is $57,079.47 ($210,000×(100%−72.8193%]). The factor of 72.8193% is the AY+2 factor from the workers' compensation series of discount factors published in Rev. Rul. 87–34.

Example 6. X was a calendar year taxpayer before July 1, 1986, the date X became a member of an affiliated group of corporations that files a consolidated return. At that time, X adopted the tax year ending June 30 of the group's common parent. Thus, X had two tax years beginning in 1986: a short tax year ending June 30, 1986, and a fiscal tax year ending June 30, 1987.

As of the end of 1985, X had undiscounted unpaid losses of $800,000 in the automobile liability line of business for the 1983 accident year. At the end of the short tax year, X had $700,000 of undiscounted unpaid losses in that reserve, and on June 30, 1987, there was $600,000 of undiscounted unpaid losses in the reserve. During the short tax year, X's loss payments for this reserve were $120,000. During the tax year ending June 30, 1987, X's loss payments for this reserve were $180,000. Under paragraph (c)(3)(i) of this section, X has a $100,000 reserve strengthening: [$700,000−[$800,000−$120,000]]+[$600,000−[$700,000−$180,000]]=[$600,000−[$800,000−$300,000]]=$100,000.

Reserve strengthening for the 1986 and 1987 accident year reserves for this line of business is determined pursuant to the principles of paragraph (c)(2) of this section.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 91–10320 Filed 5–1–91; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

Arkansas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Arkansas permanent regulatory program (hereinafter, the "Arkansas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to the Arkansas rules pertaining to the definition of "mine plan area" and the use of the term regarding requirements of information outside the permit area, existing structures, the definition of "public road," the definition of "valid existing rights," the two-acre exemption allowance and the use of the term regarding requirements for exploration and mining operations, soil surveys, geological descriptions, cross sections, maps, and plans for underground mining permit applications, prime farmland (soil compaction, estimated yields, and target yields), the definition of "irreparable damage to the environment," bond liability period (revegetation exemption), bond terms and conditions, bond procedures, and bond foreiture, water rights and replacement, blasting, post-mining land use (grazing, requirements for a higher use, and letters of commitment), and prime farmland (surface facilities on underground mining operations). The amendment is intended to revise the State program to be consistent with the corresponding Federal standards and to clarify ambiguities.

This notice sets forth the times and locations that the Arkansas program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., c.d.t., June 3, 1991. If requested, a public hearing on the proposed amendment will be held on May 27, 1991. Requests to present oral

testimony at the hearing must be received by 4 p.m., c.d.t., on May 17, 1991.

ADDRESSES: Written comments should be mailed or hand delivered to James H. Moncrief at the address listed below.

Copies of the Arkansas program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the address listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, suite 550, Tulsa, OK 74135, telephone: (918) 581–6430.

Arkansas Department of Pollution Control and Ecology, Mining Reclamation Division, 8001 National Drive, Little Rock, AR 72209, telephone (501) 562–7444.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Director, Tulsa Field Office, telephone number (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Arkansas Program

On November 21, 1980 the Secretary of the Interior conditionally approved the Arkansas program. General background information on the Arkansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Arkansas program can be found in the November 21, 1980 **Federal Register** (45 FR 77003). Subsequent actions concerning Arkansas program and program amendments can be found at 30 CFR 904.12 and 904.15.

II. Proposed Amendment

By letter dated April 11, 1991 (Administrative Record No. AR–447), Arkansas submitted a proposed amendment to its program pursuant to SMCRA. Arkansas submitted the proposed amendment at its own initiative. Arkansas proposes to amend Arkansas Surface Coal Mining and Reclamation Code sections: 701.5, 764.15(a)(7), 770.5, 771.23(a) (1) and (2), 779.11, 779.12 (a) and (b), 779.15(a), 779.16 (a) and (b)(2), 779.18(a), 779.20(a), 779.22 (a) and (c), 779.24 (g) and (k), 779.25 (d) through (h) and (j), 779.27 (a), (b)(5), and (d) (1) and (2), 780.11, 780.14 (b) and (b)(2), 780.16(a)(1), 780.23(b), 780.25 (a) and (b), 780.37(e), 786.14(b)(3), 786.19(c), 788.13(b), 816.13, 816.41(a), 816.51(b), 816.52(a) (1) and (2), 816.104 (a) (b), and (b)(3), 828.11(e), 828.12(a), and 1000(d) (1), (8), (12) and (14), the definition of "mine plan area" and the use of the term regarding requirements of information outside the permit area;

701.11(c)(1) (i) and (ii), and 1000(d)(3), existing structures;

761.5 and 1000(d)(4), the definition of "public road;"

761.5 and 1000(d)(5), the definition of "valid existing rights;"

772,707.12, 770.6(b), 770.11 (a) and (e), 810.11, 815, 815.2 (b) and (c), 815.11(e), 815.15 (a) through (d), and (f) through (k), and 1000(d)(7), the two-acre exemption allowance and the use of the term regarding requirements for exploration and mining operations;

779.21(a) and 1000(d) (11) and (17), soil surveys;

783.14 (a) through (d) and 1000(d)(15), geological descriptions;

779.25 and 1000(d)(18) cross sections, maps, and plans for underground mining permit applications;

785.17(a) (1) through (4), 785.17(b) (3) and (8), 823.14(c) and 1000(d) (20), (21), (22), and (49), prime farmland (soil compaction, estimated yields, and target yields);

786.5(b) and 1000(d)(23), the definition of "irreparable damage to the environment;"

805.13(d) and 1000(d)(24), bond liability period (revegetation exemption);

806.12 (e)(6)(iii) and (g)(7)(iii) and 1000(d) (25) and (26), bond terms and conditions;

808.12(c) and 1000(d) (27) and (28), bond procedures;

808.14 (a) and (b) and 1000(d)(29), bond forfeiture;

816.54 and 1000(d)(37), water rights and replacement;

816.65(f) and 1000(d) (38) and (39), blasting;

816.95 (a) and (b), 816.106, and 1000(d)(40), stabilization of surface areas;

780.18(b)(3), 785.16(a), 816.43(e), 816.107, 826.12(b), 827.12(m), 816.101(b)(1), 816.102 (a) and (g), 816.103, and 1000(d) (41) and (42), backfilling and grading;

816.115, 816.133(c), and 1000(d) (43), (45), and (46), postmining land use (grazing, requirements for a higher use, and letters of commitment);

and 823.1 and 1000(d)(48), prime farmland (surface facilities on underground mining operations).

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Arkansas program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by 4 p.m., c.d.t. on June 3, 1991. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM respresentatives to discuss the proposed amendment may request a meeting by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **"ADDRESSES."** A written summary of each meeting will be made part of the administrative record.

List of Subjects in 30 CFR Part 904

Intergovernmental relations, Surface mining, Underground mining.

Dated April 24, 1991.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 91-10303 Filed 5-1-91; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 906

Colorado Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed Rule; Public Comment Period and Opportunity for Public Hearing on Proposed Amendment.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Colorado permanent regulatory program (hereinafter, the "Colorado program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of changes to provisions of the Colorado rules pertaining to termination of jurisdiction, diversions, acid-forming and toxic-forming spoil, impoundments, backfilling and grading, inspections, and individual civil penalties. The amendment is intended to revise the Colorado program to be consistent with the corresponding Federal regulations and to satisfy required program amendments.

This notice sets forth the times and locations that the Colorado program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., m.d.t. June 3, 1991. If requested, a public hearing on the proposed amendment will be held on May 27, 1991. Requests to present oral testimony at the hearing must be received by 4 p.m., m.d.t. on June 3, 1991.

ADDRESSES: Written comments should be mailed or hand delivered to Robert H. Hagen at the address listed below.

Copies of the Colorado program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., suite 310, Albuquerque, NM 87102, telephone: (505) 766-1486.

Colorado Mined Land Reclamation Division, 423 Centennial Building, 1313 Sherman Street, Denver, CO 80203, telephone: (303) 866-3567.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Director, Albuquerque Field Office, or telephone number (505) 766-1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Colorado Program

On December 15, 1980, the Secretary of the Interior conditionally approved the Colorado program. General background information on the Colorado program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Colorado program can be found in the December 15, 1980, Federal Register (45 FR 82173). Subsequent actions concerning Colorado's program and program amendments can be found at 30 CFR 906.15, 906.16, and 906.30.

II. Proposed Amendment

By letter dated April 11, 1991 (Administrative Record No. CO-517), Colorado submitted a proposed amendment to its program pursuant to SMCRA. Colorado submitted the proposed amendment to satisfy required program amendments at 30 CFR 906.16 (b), (c), (d), (e), (f), (g), and (h). The provisions of 2 Code of Colorado Regulations 407-2, the rules of the Colorado Mined Land Reclamation Board, that Colorado proposes to amend are: Rule 3.03.3, termination of jurisdiction; Rules 4.05.3(1) (c), (d), and (e), diversions; Rule 4.05.8(1), acid-forming and toxic-forming spoil; Rule 4.05.9(2), impoundments; Rule 4.14.1(e), backfilling and grading; Rules 5.02.2 (8) and (9), inspections; and Rule 5.04.7(1), individual civil penalties.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Colorado program.

Written Comments

Written comments should be specific, pertain only to the issues proposed to this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m., m.d.t. on June 3, 1991. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 906

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 23, 1991.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 91-10301 Filed 5-1-91; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900-AF24

Schedule for Rating Disabilities—The Digestive System

AGENCY: Department of Veterans Affairs.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of Veterans Affairs (VA) is issuing an advance notice of proposed rulemaking (ANPRM) concerning that portion of the Schedule for Rating Disabilities which deals with disabilities of the digestive system. This ANPRM is necessary because of a General Accounting Office (GAO) study and recommendation that the medical criteria in the rating schedule be reviewed and updated as necessary. The intended effect of this ANPRM is to solicit and obtain the comments and suggestions of various interest groups and the general public on necessary additions, deletions and revisions of terminology and how best to proceed with a systematic review of the medical criteria used to evaluate disabilities of the digestive system. Other body systems will be subsequently scheduled for review until the medical criteria in the entire rating schedule have been analyzed and updated.

DATES: Written comments and submissions in response to this ANPRM must be received by VA on or before July 1, 1991.

ADDRESSES: Interested persons and organizations are invited to submit written comments and suggestions regarding this ANPRM to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written submissions will be available for public inspection only in the Veterans Service Unit, room 132, at the above address and only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until July 11, 1991.

FOR FURTHER INFORMATION CONTACT: Bob Manchester, Consultant, Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, (202) 233-3005.

SUPPLEMENTARY INFORMATION: In December 1988, GAO published a report entitled Veterans' Benefits: Need to Update Medical Criteria Used in VA's Disability Rating Schedule (GAO/HRD-89-28). After consulting numerous medical professionals and VA rating specialists GAO concluded that a comprehensive and systematic plan was needed for reviewing and updating VA's Schedule for Rating Disabilities (38 CFR part 4). The medical professionals noted outdated terminology, ambiguous impairment classifications and the need to add a number of medical conditions not presently in the rating schedule. VA rating specialists noted that for some disorders they would prefer more medical criteria for distinguishing between various levels of severity and that inconsistent ratings may result when unlisted conditions had to be rated by analogy to other listed disorders. GAO recommended that VA prepare a plan for a comprehensive review of the rating schedule and, based on the results, revise the medical criteria accordingly. It also recommended that VA implement a procedure for systematically reviewing the rating schedule to keep it updated. VA agreed to both recommendations, and this ANPRM is one step in a comprehensive rating schedule review plan which will ultimately be converted into a systematic, cyclical review process.

This ANPRM is the first stage in VA's consideration of what regulatory action to take, if any, with respect to revising and updating that portion of the rating schedule dealing with disabilities of the digestive system (38 CFR 4.114). Interested organizations and individuals are invited to submit comments and suggestions for revising current medical criteria, adding additional disabilities and/or deleting certain rarely encountered disorders or transferring them to other sections of the rating schedule. Submissions may run the gamut from narrative discussions of individual rating criteria to wholesale format changes and substitute rating schedules. Where changes are suggested, we would also appreciate a recitation as to the scientific or medical authority for such changes. Early submissions will expedite the comment review process and are encouraged.

List of Subjects in 38 CFR Part 4

Handicapped, Pensions, Veterans.

Approved: April 16, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

[FR Doc. 91-10409 Filed 5-1-91; 8:45 am]

BILLING CODE 8320-01-M

38 CFR Part 4

RIN 2900-AF02

Schedule for Rating Disabilities—The Hemic and Lymphatic Systems

AGENCY: Department of Veterans Affairs.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of Veterans Affairs (VA) is issuing an advance notice of proposed rulemaking (ANPRM) concerning that portion of the Schedule for Rating Disabilities which deals with disabilities of the hemic and lymphatic systems. This ANPRM is necessary because of a General Accounting Office (GAO) study and recommendation that the medical criteria in the rating schedule be reviewed and updated as necessary. The intended effect of this ANPRM is to solicit and obtain the comments and suggestions of various interest groups and the general public on necessary additions, deletions and revisions of terminology and how best to proceed with a systematic review of the medical criteria used to evaluate disabilities of the hemic and lymphatic systems. Other body systems will be subsequently scheduled for review until the medical criteria in the entire rating schedule have been analyzed and updated.

DATES: Written comments and submissions in response to this ANPRM must be received by VA on or before July 1, 1991.

ADDRESSES: Interested persons and organizations are invited to submit written comments and suggestions regarding this ANPRM to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420. All written submissions will be available for public inspection only in the Veterans Service Unit, room 132, at the above address and only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until July 11, 1991.

FOR FURTHER INFORMATION CONTACT: Bob Seavey, Consultant, Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, (202) 233-3005.

SUPPLEMENTARY INFORMATION: In December 1988 the GAO published a report entitled *Veterans' Benefits: Need to Update Medical Criteria Used in VA's Disability Rating Schedule* (GAO/HRD-89-28). After consulting numerous

medical professionals and VA rating specialists GAO concluded that a comprehensive and systematic plan was needed for reviewing and updating VA's Schedule for Rating Disabilities (38 CFR part 4). The medical professionals noted outdated terminology, ambiguous impairment classifications and the need to add a number of medical conditions not presently in the rating schedule. VA rating specialists noted that for some disorders they would prefer more medical criteria for distinguishing between various levels of severity and that inconsistent ratings may result when unlisted conditions had to be rated by analogy to other listed disorders. The GAO recommended that VA prepare a plan for a comprehensive review of the rating schedule and, based on the results, revise the medical criteria accordingly. It also recommended that VA implement a procedure for systematically reviewing the rating schedule to keep it updated. VA agreed to both recommendations, and this ANPRM is one step in a comprehensive rating schedule review plan which will ultimately be converted into a systematic, cyclical review process.

This ANPRM is the first stage in VA's consideration of what regualtory action to take, if any, with respect to revising and updating that portion of the rating schedule dealing with disabilities of the hemic and lymphatic systems (38 CFR 4.117). Interested organizations and individuals are invited to submit comments and suggestions for revising current medical criteria, adding additional disabilities and/or deleting certain rarely encountered disorders or transferring them to other sections of the rating schedule. Submissions may run the gamut from narrative discussions of individual rating criteria to wholesale format changes and substitute rating schedules. Where changes are suggested, we would also appreciate a recitation as to the scientific or medical authority for such changes. Early submissions will expedite the comment review process and are encouraged.

List of Subjects in 38 CFR Part 4

Handicapped, Pensions, Veterans.

Approved: April 2, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

[FR Doc. 91-10412 Filed 5-1-91; 8:45 am]

BILLING CODE 8320-01-M

38 CFR Part 4

RIN 2900-AF23

Schedule for Rating Disabilities—Neurological Conditions and Convulsive Disorders

AGENCY: Department of Veterans Affairs.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of Veterans Affairs (VA) is issuing an advance notice of proposed rulemaking (ANPRM) concerning that portion of the Schedule for Rating Disabilities which deals with neurological conditions and convulsive disorders. This ANPRM is necessary because of a General Accounting Office (GAO) study and recommendation that the medical criteria in the rating schedule be reviewed and updated as necessary. The intended effect of this ANPRM is to solicit and obtain the comments and suggestions of various interest groups and the general public on necessary additions, deletions and revisions of terminology and how best to proceed with a systematic review of the medical criteria used to evaluate neurological conditions and convulsive disorders. Other body systems will be subsequently scheduled for review until the medical criteria in the entire rating schedule have been analyzed and updated.

DATES: Written comments and submissions in response to this ANPRM must be received by VA on or before July 1, 1991.

ADDRESSES: Interested persons and organizations are invited to submit written comments and suggestions regarding this ANPRM to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All written submissions will be available for public inspection only in the Veterans Service Unit, room 132, at the above address and only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until July 11, 1991.

FOR FURTHER INFORMATION CONTACT: Joel Drembus, Consultant, Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, (202) 233-3005.

SUPPLEMENTARY INFORMATION: In December 1988, GAO published a report entitled Veterans' Benefits: Need to Update Medical Criteria Used in VA's Disability Rating Schedule (GAO/HRD-89-28). After consulting numerous medical professionals and VA rating specialists, GAO concluded that a comprehensive and systematic plan was needed for reviewing and updating VA's Schedule for Rating Disabilities (38 CFR part 4). The medical professionals noted outdated terminology, ambiguous impairment classifications and the need to add a number of medical conditions not presently in the rating schedule. VA rating specialists noted that for some disorders they would prefer more medical criteria for distinguishing between various levels of severity and that inconsistent ratings may result when unlisted conditions had to be rated by analogy to other listed disorders. GAO recommended that VA prepare a plan for a comprehensive review of the rating schedule and, based on the results, revise the medical criteria accordingly. It also recommended that VA implement a procedure for systematically reviewing the rating schedule to keep it updated. VA agreed to both recommendations, and this ANPRM is one step in a comprehensive rating schedule review plan which will ultimately be converted into a systematic, cyclical review process.

This ANPRM is the first stage in VA's consideration of what regulatory action to take, if any, with respect to revising and updating that portion of the rating schedule dealing with neurological conditions and convulsive disorders (38 CFR 4.120 through 4.124a).

Interested organizations and individuals are invited to submit comments and suggestions for revising current medical criteria, adding additional disabilities and/or deleting certain rarely encountered disorders or transferring them to other sections of the rating schedule. Submissions may run the gamut from narrative discussions of individual rating criteria to wholesale format changes and substitute rating schedules. Where changes are suggested, we would also appreciate a recitation as to the scientific or medical authority for such changes. Early submissions will expedite the comment review process and are encourged.

List of Subjects in 38 CFR Part 4

Handicapped, Pensions, Veterans.

Approved: April 11, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

[FR Doc. 91-10408 Filed 5-1-91; 8:45 am]

BILLING CODE 8320-01-M

38 CFR Part 4

RIN 2900-AF01

Schedule for Rating Disabilities—Mental Disorders

AGENCY: Department of Veterans Affairs.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of Veterans Affairs (VA) is issuing an advance notice of proposed rulemaking (ANPRM) concerning that portion of the Schedule for Rating Disabilities which deals with mental disorders. This ANPRM is necessary because of a General Accounting Office (GAO) study and recommendation that the medical criteria in the rating schedule be reviewed and updated as necessary. The intended effect of this ANPRM is to solicit and obtain the comments and suggestions of various interest groups and the general public on necessary additions, deletions and revisions of terminology and how best to proceed with a systematic review of the medical criteria used to evaluate mental disorders.

DATES: Written comments and submissions in response to this ANPRM must be received by VA on or before July 1, 1991.

ADDRESSES: Interested persons and organizations are invited to submit written comments and suggestions regarding this ANPRM to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington DC 20420. All written submissions will be available for public inspection only in the Veterans Service Unit, room 132, at the above address and only between the hours of 8 am. and 4:30 p.m. Monday through Friday (except holidays) until July 11, 1991.

FOR FURTHER INFORMATION CONTACT: Bob Seavey, Consultant, Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, (202) 233–3005.

SUPPLEMENTARY INFORMATION: In December 1988 the GAO published a report entitled Veterans' Benefits: Need to Update Medical Criteria Used in VA's Disability Rating Schedule (GAO/HRD–89–28). After consulting numerous medical professionals and VA rating specialists, GAO concluded that a comprehensive and systematic plan was needed for reviewing and updating VA's Schedule for Rating Disabilities (38 CFR part 4). The medical professionals noted outdated terminology, ambiguous impairment classifications and the need to add a number of medical conditions not presently in the rating schedule. VA rating specialists noted that for some disorders they would prefer more medical criteria for distinguishing between various levels of severity and that inconsistent ratings may result when unlisted conditions had to be rated by analogy to other listed disorders. The GAO recommended that VA prepare a plan for a comprehensive review of the rating schedule and, based on the results, revise the medical criteria accordingly. It also recommended that VA implement a procedure for systematically reviewing the rating schedule to keep it updated. VA agreed to both recommendations, and this ANPRM is one step in a comprehensive rating schedule review plan which will ultimately be converted into a systematic, cyclical review process.

This ANPRM is the first stage in VA's consideration of what regulatory action to take, if any, with respect to revising and updating that portion of the rating schedule dealing with mental disorders (38 CFR 4.125 through 4.132). Interested organizations and individuals are invited to submit comments and suggestions for revising current medical criteria, adding additional disabilities and/or deleting certain rarely encountered disorders or transferring them to other sections of the rating schedule. Submissions may run the gamut from narrative discussions of individual rating criteria to wholesale format changes and substitute rating schedules. Where changes are suggested, we would also appreciate a recitation as to the scientific or medical authority for such changes. Early submissions will expedite the comment review process and are encouraged.

List of Subjects in 38 CFR Part 4

Handicapped, Pensions, Veterans.

Approved: April 11, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

[FR Doc. 91–10411 Filed 5–1–91; 8:45 am]

BILLING CODE 8320-01-M

38 CFR Part 4

RIN 2900-AF22

Schedule for Rating Disabilities; Impairments of the Eye, Ear, and Other Sense Organs

AGENCY: Department of Veterans Affairs.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of Veterans Affairs (VA) is issuing an advance notice of proposed rulemaking (ANPRM) concerning that portion of the Schedule for Rating Disabilities which deals with impairments of the eye, ear and other sense organs. This ANPRM is necessary because of a General Accounting Office (GAO) study and recommendation that the medical criteria in the rating schedule be reviewed and updated as necessary. The intended effect of this ANPRM is to solicit and obtain the comments and suggestions of various interest groups and the general public on necessary additions, deletions and revisions of terminology and how best to proceed with a systematic review of the medical criteria used to evaluate impairments of the eye, ear and other sense organs.

DATES: Written comments and submissions in response to this ANPRM must be received by VA on or before July 1, 1991.

ADDRESSES: Interested persons and organizations are invited to submit written comments and suggestions regarding this ANPRM to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All written submissions will be available for public inspection only in the Veterans Service Unit, room 132, at the above address and only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until July 11, 1991.

FOR FURTHER INFORMATION CONTACT: Bob Seavey, Consultant, Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, (202) 233–3005.

SUPPLEMENTARY INFORMATION: In December 1988, GAO published a report entitled Veterans' Benefits: Need to Update Medical Criteria Used in VA's Disability Rating Schedule (GAO/HRD–89–28). After consulting numerous medical professionals and VA rating specialists GAO concluded that a comprehensive and systematic plan was needed for reviewing and updating VA's Schedule for Rating Disabilities (38 CFR part 4). The medical professionals noted outdated terminology, ambiguous impairment classifications and the need to add a number of medical conditions not presently in the rating schedule. VA rating specialists noted that for some disorders they would prefer more medical criteria for distinguishing between various levels of severity and that inconsistent ratings may result when unlisted conditions had to be rated by analogy to other listed disorders. GAO recommended that VA prepare a plan for a comprehensive

review of the rating schedule and, based on the results, revise the medical criteria accordingly. It also recommended that VA implement a procedure for systematically reviewing the rating schedule to keep it updated. VA agreed to both recommendations, and this ANPRM is one step in a comprehensive rating schedule review plan which will ultimately be converted into a systematic, cyclical review process.

This ANPRM is the first stage in VA's consideration of what regulatory action to take, if any, with respect to revising and updating that portion of the rating schedule dealing with impairments of the eye, ear and other sense organs (38 CFR 4.75 through 4.87b). Interested organizations and individuals are invited to submit comments and suggestions for revising current medical criteria, adding additional disabilities and/or deleting certain rarely encountered disorders or transferring them to other sections of the rating schedule. Submissions may run the gamut from narrative discussions of individual rating criteria to wholesale format changes and substitute rating schedules. Where changes are suggested, we would also appreciate a recitation as to the scientific and medical authority for such changes. Early submissions will expedite the comment review process and are encouraged.

List of Subjects in 38 CFR Part 4

Handicapped, Pensions, Veterans.

Approved: April 11, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

[FR Doc. 91-10407 Filed 5-1-91; 8:45 am]

BILLING CODE 8320-01-M

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38 CFR Part 4

RIN 2900-AF00

Schedule for Rating Disabilities—The Skin

AGENCY: Department of Veterans Affairs.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of Veterans Affairs (VA) is issuing an advance notice of proposed rulemaking (ANPRM) concerning that portion of the Schedule for Rating Disabilities which deals with disabilities of the skin. This ANPRM is necessary because of a General Accounting Office (GAO) study and recommendation that the medical criteria in the rating schedule be reviewed and updated as necessary. The intended effect of this ANPRM is to solicit and obtain the comments and suggestions of various interest groups and the general public on necessary additions, deletions and revisions of terminology and how best to proceed with a systematic review of the medical criteria used to evaluate disabilities of the skin. Other body systems will be subsequently scheduled for review until the medical criteria in the entire rating schedule have been analyzed and updated.

DATES: Written comments and submissions in response to this ANPRM must be received by VA on or before July 1, 1991.

ADDRESSES: Interested persons and organizations are invited to submit written comments and suggestions regarding this ANPRM to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420. All written submissions will be available for public inspection only in the Veterans Service Unit, room 132, at the above addresses and only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until July 11, 1991.

FOR FURTHER INFORMATION CONTACT: Bob Seavey, Consultant, Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, (202) 233-3005.

SUPPLEMENTARY INFORMATION: In December 1988 the GAO published a report entitled Veterans' Benefits: Need to Update Medical Criteria Used in VA's Disability Rating Schedule (GAO/HRD-89-28). After consulting numerous medical professionals and VA rating specialists GAO concluded that a comprehensive and systematic plan was needed for reviewing and updating VA's Schedule for Rating Disabilities (38 CFR part 4). The medical professionals noted outdated terminology, ambiguous impairment classifications and the need to add a number of medical conditions not presently in the rating schedule. VA rating specialists noted that for some disorders they would prefer more medical criteria for distinguishing between various levels of severity and that inconsistent ratings may result when unlisted conditions had to be rated by analogy to other listed disorders. The GAO recommended that VA prepare a plan for a comprehensive review of the rating schedule and, based on the results, revise the medical criteria accordingly. It also recommended that VA implement a procedure for systematically reviewing the rating schedule to keep it updated. VA agreed to both recommendations, and this ANPRM is one step in a comprehensive rating schedule review plan which will lultimately be converted into a systematic, cyclical review process.

This ANPRM is the first stage in VA's consideration of what regulatory action to take, if any, with respect to revising and updating that portion of the rating schedule dealing with disabilities of the skin (38 CFR 4.118). Interested organizations and individuals are invited to submit comments and suggestions for revising current medical criteria, adding additional disabilities and/or deleting certain rarely encountered disorders or transferring them to other sections of the rating schedule. Submissions may run the gamut from narrative discussions of individual rating criteria to wholesale format changes and substitute rating schedules. Where changes are suggested, we would also appreciate a recitation as to the scientific or medical authority for such changes. Early submissions will expedite the comment review process and are encouraged.

List of Subjects in 38 CFR Part 4

Handicapped, Pensions, Veterans.

Approved: April 2, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

[FR Doc. 91-10410 Filed 5-1-91; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 89-26; Notice 2]

RIN 2127-AD24

Federal Motor Vehicle Safety Standards; Cross View Mirrors on School Buses

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes amending Federal Motor Vehicle Safety Standard No. 111, Rearview Mirrors, with respect to the field-of-view around school buses. The notice proposes to amend the standard to require a bus driver to be able to see, either directly or through mirrors, certain specified areas in front of and along the side of school buses; to specify certain criteria for convex cross view mirrors; and to establish test conditions designed to ensure that the image of an object is not unreasonably distorted.

The notice also announces the agency's decision not to proceed further with rulemaking to require school buses to be equipped with other devices such as crossing control arms, sensors, or video monitors. Since these devices would increase the costs of school buses without significant corresponding benefits, the agency has determined that States and local school districts should decide whether to use them.

DATES: Comments on this notice must be received on or before June 17, 1991.

The amendments would be effective one year after publication of the final rule.

ADDRESSES: All comments on this notice should refer to Docket No. 89–26; Notice 2 and be submitted to the following: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (Docket hours 9:30 a.m. to 4 p.m.).

FOR FURTHER INFORMATION CONTACT: Mr. Charles Gauthier, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202) 366–4799.

SUPPLEMENTARY INFORMATION:

Background

School buses provide an extremely safe means of transportation. On a vehicle-mile basis, school buses are about four times safer than passenger cars. Despite this outstanding safety record, injuries and fatalities involving school buses do occur. In its May 1989 report, "Improving School Bus Safety," the National Academy of Sciences (NAS) noted that an average of 15 school bus passengers are fatally injured each year in school bus crashes. In addition, 38 pedestrians are killed in school-bus-related incidents. Of these 38 pedestrian fatalities, an average of 26 result from students being struck by their own school bus and 12 result from students being struck by another vehicle. NAS further estimated that 283 children are injured each year when struck by their own bus. While most of these injuries are minor, about 20 percent are classified as "incapacitating," i.e., an injury that prevents the injured person from walking, driving or normally continuing activities he or she was capable of performing before the injury occurred. Because of the larger safety risk to children as pedestrians around school buses, the NAS report concluded that "(i)f the cost and effectiveness of the various safety measures are the same, those measures designed to reduce or prevent pedestrian fatalities are better safety investments than measures designed to prevent passenger fatalities."

The agency has attempted to increase the safety of student pedestrians in the vicinity of school buses through Federal Motor Vehicle Safety Standard No. 111, Rearview Mirrors, (49 CFR 571.111). That standard requires each school bus that is not a forward control vehicle, i.e., a transit style bus, to have an outside cross view mirror of a specified size and shape (S9.2), "mounted so as to provide the driver a view of the front bumper and the area in front of the bus." (S9.2(b)) The standard also requires each school bus to have outside rear-view mirrors of unit magnification on each side of the bus, to provide the driver with a view to the rear along both sides of the bus (S9.1). While the requirements in FMVSS No. 111 establish a minimum level of safety performance for mirrors on school buses, nearly every State requires school buses to be equipped with more mirrors, particularly cross view mirrors, than are required by these minimum requirements.

As noted earlier, approximately two-thirds of student pedestrians killed in school-bus-related incidents are struck by their own bus. According to the May 1989 NAS study, "two-thirds are struck by the front of the bus and one-third by the rear of the bus, usually the rear wheels." A review of the individual incidents reveals that the fatalities occurred because the driver did not see the child in front of, or to the side of, the bus. In many cases in which the child was run over by the bus's rear wheels, the bus had already left the school bus stop. In these cases, the children were often running after the moving bus and fell under the rear wheels. It is not clear that such incidents can be totally avoided through changes to the mirror requirements, since once the school bus is moving, the driver must focus on other driving actions, not just looking at mirror systems to check for pedestrians around the bus. However, to prevent students from being struck by their own bus while the bus is leaving the school bus loading zone, it appears desirable to improve the means available for the school bus driver to detect their presence.

The annual nationwide "School Bus Loading and Unloading Survey" conducted by the Kansas Department of Transportation (Kansas) confirms that a significant, although decreasing, number of pedestrians are killed by school buses. The Kansas data indicate that the number of pupils killed nationwide in school bus loading zones was 45 in 1985, 42 in 1986, 32 in 1987, 16 in 1988, and 17 in 1989. The agency believes that the decrease in the number of school bus loading fatalities is due to a combination of factors, including the use of more and better mirrors, the increased use of stop signal arms, and improved school bus driver and student training. Despite this trend, this type of incident remains the most common way students are killed in school-bus-related incidents. The Kansas survey further reveals that 68 percent of the fatalities were children eight years old or less.

The NAS report evaluated a number of measures to determine their potential safety benefit in reducing pedestrian fatalities and injuries caused by school buses. The report concluded that the best way to improve safety relies on the combined efforts of parents, local schools and communities, local and Federal governments, and the school bus industry. In addition to evaluating the potential safety benefit of mirrors and other items of equipment, the NAS report recommended a number of changes in bus operating practices, including (1) improved driver training with an emphasis on loading zone safety; (2) improved programs to educate children about walking to and from the bus stop and loading zone behavior; and (3) improved planning of school bus routes to reduce the number of children who must cross in front of a stopped school bus.

As directed by Congress, NHTSA reviewed the findings of the NAS report and published a notice discussing which of these measures were potentially most effective in protecting school children in and around school buses. (54 FR 29629, July 13 1989). Measures that relate to operating practices are being addressed through NHTSA's State and community highway safety grant program (23 U.S.C. 402). Measures deemed "most effective" that relate to changes to the school bus itself included additional outside cross view mirrors. NAS also indicated the availability of other devices designed to prevent pedestrian fatalities with school buses. One such device is the crossing control arm which mechanically swings out from the bus's front bumper to create an obstacle that children must walk around, forcing them to stay far enough from the bumper so that they remain within the driver's direct field-of-view. Other devices rely on radar, microwave, ultrasonic, and video systems to detect children that might be struck by a bus as it leaves the loading zone. There are still other devices which automatically apply the brakes of the bus when a sensor detects a child immediately in front of a wheel. The NAS report recommended that NHTSA,

the States, and local school districts test these devices to assess their benefits and costs.

Advance Notice of Proposed Rulemaking

General

On December 27, 1989, NHTSA issued an Advance Notice of Proposed Rulemaking (ANPRM) announcing the agency's interest in measures designed to prevent children from being struck by school buses during and after loading and unloading operations. (54 FR 53127). The notice requested information about the safety need for amending the requirements for convex cross view mirrors on school buses in FMVSS No. 111, and for possible requirements for crossing control arms, sensors, or video monitors. The agency was particularly interested in the effects of these devices on the safety of school children and in the costs and possible negative effects of such devices.

The ANPRM also asked questions about pedestrian safety around school buses to assist the agency in deciding whether to issue this proposal about cross view mirror systems and other devices designed to protect pedestrians from being struck by the school bus. Among the issues presented were: (1) The safety need for amending the mirror requirements or for requiring additional equipment such as crossing control arms; (2) the need to develop performance requirements to ensure that a driver sees or is otherwise aware of pedestrians in school bus loading zones; (3) the costs of requiring different types of or additional mirror systems and of requiring other types of equipment; and (4) the potential impact of new requirements on school bus users currently in compliance with FMVSS No. 111 and on current State laws that would differ from the Federal requirements that might be proposed.

The agency received comments from State and local governmental organizations, school bus manufacturers, mirror and other equipment manufacturers, associations, and individuals. The commenters generally agreed that measures should be taken to reduce the number of children struck by school buses and to improve the view of school bus drivers around the school bus while it is in the school bus loading zone. Commenters also addressed other issues raised in the ANPRM, including the need for devices other than mirror systems for increasing school bus drivers' awareness of children outside of school buses, the benefits from training programs, and the costs of the equipment addressed in the ANPRM.

Safety Need

The ANPRM first asked whether there was a safety need to propose amending the requirements for school bus mirrors or to introduce new requirements to prevent such injuries. The notice asked for detailed information about the circumstances of crashes in which pedestrians were injured by their own school bus. This included information about the type of school bus, the type of mirrors and other crash avoidance equipment on the school bus, the victim, and the environmental and locational circumstances of the incident.

The commenters provided general information supporting the NAS recommendation for the agency to consider amending FMVSS No. 111 to provide the school bus driver with a better view of the area in front of and immediately beside the school bus. The Connecticut Department of Motor Vehicles (Connecticut), the Minnesota School Bus Safety Committee (Minnesota), and the Virginia Department of Education (Virginia) provided data and descriptions of fatal crashes involving school buses and pedestrians. In addition, as noted earlier, the data from the Kansas DOT survey indicate that this type of fatality remains the largest cause of death associated with school buses. The data provide evidence that such incidents occur in a wide variety of situations. However, in some instances, fatalities result because the driver was distracted or the fatality occurred outside of the loading zone, such as along the bus route. In such cases, additional mirrors or other devices would not have prevented the fatality. Nevertheless, a significant number of fatalities and injuries do occur in the loading zone. This led the California Association of School Transportation Officials to comment that given "the pupil accident rate outside of the school bus, it is apparent that Federal Safety Sandard 111 certainly needs to be scrutinized."

Field-of-View and Mirror Requirements

The ANPRM asked about the need for generalized performance requirements to improve a driver's ability to detect pedestrians in school bus loading zones. This included questions about a mirror image's size and clarity, general field-of-view requirements for direct and indirect visibility, State and local mirror requirements, mirror designs, mirror location and aim, and potentially negative aspects of additional requirements. The ANPRM explained that field-of-view inversely relates to image size and quality; that is, the larger the field-of-view, the smaller and more distorted the image generally becomes.

Several commenters supported having a field-of-view requirement, instead of a requirement setting forth mirror specifications. The Superintendent of Public Instruction in Washington (Washington), which has the former type of requirement, favored a requirement delineating "what a driver must be able to view from a properly adjusted driver's seat, either directly or indirectly with mirrors or other devices." Wisconsin stated that adopting a field-of-view requirement is better than forcing the States to adhere to a strict inflexible requirement. The National School Transportation Association (NSTA) stated that manufacturers and operators should determine how to meet a visibility requirement. Mirror Lite commented that field-of-view requirements for each bus are necessary. Blue Bird believed that FMVSS No. 111 should be amended to establish field-of-view requirements and test procedures instead of having a uniform Federal specification for specific mirror designs, believing that a mirror design specification would hinder future innovations.

Several States and school bus manufacturers commented about the areas that a field-of-view requirement should encompass. Connecticut, Washington, and Blue Bird agreed that the driver should be able to see along the front of the bus, the front tires, the entrance door, and the sides of the bus, including the rear wheels. Such a field-of-view requirement is consistent with the recommendation of the Eleventh National School Bus Conference, detailed below. While no commenter supported a more limited field-of-view, several commenters, including Michigan, Virginia, and Thomas Built, warned that mirrors are passive devices that will not ensure the safety of student pedestrians. Blue Bird and Thomas Built noted that drivers may get confused or not use all the mirrors if buses are equipped with too many mirrors.

Even with this general preference for a field-of-view requirement, commenters emphasized that specific requirements are necessary to ensure that a driver can recognize that the image of a child is in a mirror. Blue Bird commented about acceptable limits for the amount of distortion, depth perception, minification and other optical changes. However, they continued by stating that, in the absence of established performance standards, the acceptable limits can only be based on personal opinion. Thomas Built agreed that a

trade-off exists between image distortion and field-of-view. Washington agreed that the image should be as distortion free as possible.

Blue Bird, Thomas Built, Virginia, and Washington stated that all school buses, including transit style school buses, should be subject to the requirements. (As noted above, transit style school buses are currently excluded from the FMVSS No. 111 requirement for an outside cross view mirror.) No commenters believed transit style school buses should be exempt from the requirements, although several praised these buses for providing the best direct visibility.

Given NHTSA's decision to propose establishing a field-of-view standard for school buses under FMVSS No. 111, the agency tentatively concludes that it should not have different requirements for transit style buses. In addition, despite the increased direct visibility provided by transit style buses, some areas near them can only be seen through the use of mirrors. Details about these performance requirements are explained later in this notice.

A number of mirror manufacturers submitted information on mirror performance. Each offered opinions that appear to favor its product. Moto Mirror offers an electrically-controlled, rotating, distortion free, flat glass mirror that can be heated to remove rain and ice from its surface. Multivex offers an aspheric (variable curvature) mirror, which it claimed provides a large field-of-view with larger and clearer images than a spherical mirror. Mirror Lite claimed that its "bus-boy" mirror provides the largest field-of-view with distortion free images.

NHTSA believes that the claims by the mirror manufacturers indicate the highly competitive nature of the mirror industry. The numerous mirror designs on the market provide additional support for establishing field-of-view requirements, rather than mirror specifications, which may be overly restrictive and thus hinder development of new mirror technologies. Nevertheless, given that convex mirrors inherently provide smaller and more distorted images than flat mirrors, the agency has tentatively decided that certain minimum mirror specifications are necessary to ensure that size and image quality are good enough to enable a driver to recognize that an image in the mirror is that of a child. Specific mirror requirements are discussed later in this proposal.

Recent Developments About Mirrors

Since the issuance of the ANPRM, there have been several developments relating to school bus mirrors. In May 1990, the 11th National Standards Conference on School Transportation met to establish "standards" for school bus bodies, chassis, and operations. These "standards" are voluntary guidelines, which serve as recommendations to State and local school bus operators. After approving a "standard" for exterior school bus mirrors, the Conference forwarded it to NHTSA for further consideration. That standard recommends the following:

A. Rear Vision Mirror: "The mirror system shall be capable of providing a view along the left and right sides of the vehicle which will provide the driver with a view of the rear tires at ground level, a minimum distance of 200 feet to the rear of the bus, and at least 12 feet perpendicular to the side of the bus at the rear axle line.

B. Crossview Mirror System: The crossview mirror system shall provide the driver with indirect vision of an area at ground level from the front bumper forward and the entire width of the bus to a point where the driver can see by direct vision. The cross view system shall also provide the driver with indirect vision of the area at ground level around the left and right front corners of the bus to include the tires and service entrance on all types of buses to a point where it overlaps with the rear vision mirror system.

C. This system of mirrors shall be easily adjustable but be rigidly braced so as to reduce vibration."

In addition, new mirror requirements became effective for school buses in Ohio on January 1, 1990. Even though these requirements contain design criteria, they also include field-of-view specifications for side view and cross view mirrors, as follows:

Side View Mirrors "The exterior side view mirror systems shall meet all federal standards including FMVSS 111, and shall provide a field of view from behind the entrance door to the rear-most part of the school bus. The mirror shall also make the area from the top of the side windows to the ground clearly visible to the school bus driver. Any object or twelve-inch traffic cone located within six inches of the rear dual wheels shall be visible and clearly identifiable to the seated school bus driver on either side of the bus."

Cross View Mirrors "The crossview mirror system shall provide the seated driver with indirect observation of the front bumper and the area in front of the front bumper of the bus not under direct observation of the seated driver. The mirror system shall include a clear view around the front wheels and shall include the area from the front bumper back to the entrance door on the right and from the front bumper to the driver's window on the left side of the bus."

Research on Mirror Systems

In the fall of 1989, NHTSA initiated a research study to identify problems in using school bus cross view mirror systems to detect children near the front of a school bus. The study was designed to ascertain objectively the field-of-view provided by seven mirror systems on three bus configurations and to confirm laboratory test results by measuring the performance of bus drivers using those mirror systems in simulated object detection studies. The study evaluated elliptical, quadra-spherical, banana, and other cross view mirrors on a traditional school bus, a transit style school bus, and a van style school bus. The results of that research are contained in the report. "Ergonomic Research on School Bus Cross View Mirror Systems," by the Vehicle Research & Test Center and R&R Research Inc. ("VRTC report").

Among the VRTC report's conclusions were that—

1. It is better to have a "distorted" object in the mirror than no object at all.

2. Based on subjective evaluations by school bus drivers, larger surface area mirrors with a higher radius of curvature are preferable to mirrors with small surface areas with numerically low radii of curvature. However, test subjects missed detecting some objects in the former types of mirrors, notwithstanding their large field-of-view.

3. The amount of minification of image size that can be tolerated in a convex mirror is an important ingredient in determining the useful field-of-view of that mirror. This is especially important given that drivers tend to use fender-mounted mirrors for driving and for detecting children at the side of the bus, especially near the rear right wheel.

4. Establishing minimum detectable image size may effectively control the minification of objects viewed in a mirror. The radius of curvature affects the visual angle subtended by an object seen by a driver in a mirror.

5. Image degradation and minification appear related to the radius of curvature; that is, as the radius decreases, image degradation and minification increases.

6. Using standard discrimination measures for drivers with 20/40 acuity and visual angle detection criteria, a minimum allowable radius of curvature can be established for school bus mirror configurations.

NHTSA staff conducted tests which appeared to verify the conclusions of the

VRTC report. In the agency's tests, a three-foot high object simulating a child was placed at various locations alongside and in front of a conventional school bus. The ability of various persons to detect and recognize the object was recorded for five different mirror systems. That activity emphasized that image size is critical to detection and recognition and confirmed the VRTC report's findings that objects near the rear axle area pose special problems for drivers. The agency's tests also studied the space necessary between the object's image and the edge of the mirror because for some mirrors, the image may be visible, but difficult to detect.

Agency Proposal

NHTSA has decided to issue this notice of proposed rulemaking (NPRM) to amend the requirements for mirrors on school buses based on the NAS report, the VRTC report, the agency's review of the comments to the ANPRM, and other available information. However, the agency has decided not to propose requirements for other devices discussed in the ANPRM.

Based on the available information, NHTSA has decided to propose requirements regarding the field-of-view around school buses. The requirements would require a school bus driver to able to see, directly or through mirrors, critical areas around the school bus. The agency has tentatively determined that a driver should be able to see at least the area at ground level from the front bumper forward and an area around the left and right front corners of the bus, including the tires and service door to the right rear of the bus. As elaborated below, cylinders representing children would be placed at such critical locations, as specified in S13.1 and Figure 2.

The agency notes that compared with the current requirement in Standard No. 111, which requires the driver to have a "view of the front bumper and the area in front of the bus," this proposal would extend the areas which must be visible, provide field-of-view requirements applicable to any school bus configuration, and provide greater objectivity. NHTSA welcomes comments about whether such a field-of-view oriented requirement is appropriate. The agency also requests information about whether the proposed field-of-view requirements, as expressed through the placement of the cylinders, would reasonably reflect the locations at which school bus pedestrian are struck.

The proposal would require school buses to be equipped with two outside rearview mirror systems: Flat driving mirrors of unit magnification (designated as "System A") and convex cross view mirrors for student detection (designated as "System B"). Each mirror system would be required to have mirrors on both the left and right sides of the school bus. The areas viewable along the bus's sides via the two mirror systems would required to overlap, providing the driver with a view of the ground in front of and alongside the bus and extending at least 200 feet rearward from the mirror.

The proposal regarding "System A" would modify the current requirements for outside rearview mirrors of unit magnification, i.e., flat mirrors that do not distort images. The standard currently requires these mirrors to be on each side of the bus, to have at least 50 square inches of reflective surface, and to provide the driver a view to the rear along both sides of the vehicle. While these mirrors are primarily intended to serve as driving mirrors, they are used by drivers to see students in the loading zone along the sides of buses. As detailed in S9.2, the agency has tentatively determined that the requirements for these mirrors should be more objective and should expand the field-of-view to include a larger area. This proposal reflects the findings of the 11th National Conference on School Transportation and accounts in the NAS report and docket that a significant number of incidents occur by the right rear wheels of school buses. Such incidents were not found to occur by the left rear wheels of school buses. Accordingly, S9.2 would be amended to require that the driver have a view at least 200 feet to the rear and at least 2 feet perpendicular to the right side of the bus. The agency welcomes comments about the need for, appropriateness of, and the feasibility of this proposed requirement.

The proposal in S9.3(a) would require that if the entire top surface of each cylinder placed in front of or by the front wheels of the bus is not directly visible, it must be visible in one of the convex cross view mirrors. The agency has tentatively determined that such a field-of-view approach would permit the applicability of the proposed requirements to any school bus configuration. The agency requests comments about the feasibility of requiring observation of the entire top surface of the cylinders.

The agency also is proposing to modify the requirements in current S9.2 for outside convex cross view mirrors. Along with the specifications of areas to be viewed, section S9.2(a) currently contains detailed specifications about convex mirror characteristics, including minimum and maximum permissible radii of curvature, minimum surface areas, and restrictions for convex mirrors with non-uniform radii. The agency notes that the proposal in S9.3(b)(1) to require a minimum projected area of at least 40 square inches essentially restates a current requirement in S9.2(a). The agency has tentatively determined that retaining this provision would be worthwhile since it helps enable convex cross view mirrors to provide an adequate field-of-view.

NHTSA is proposing to delete several of the other requirements for convex cross view mirrors and replace them with the field-of-view requirements explained earlier. The agency has determined that focusing on field-of-view rather than mirror design would remove artificial restrictions to new mirror systems and promote the development of new designs. In turn, removing these restrictions would permit States and local school districts to use a wider variety of mirrors.

The agency is proposing a new requirement in S9.3(b)(2) which would require each mirror to be located such that the distance from the center point of the eye location of a 25th percentile adult female driver to the center of the mirror plus one-half the smallest radius or curvature on the mirror surface be at least 39 inches. This proposal is based on the VRTC report's findings about accommodation distances, i.e., the finding that older people have greater difficulty focusing on nearly objects, especially in convex mirrors. According to the VRTC report, if the distance between the driver and the image in the mirror is less than 40 inches, drivers over 40 years old may see a blurred image. The agency therefore is proposing to require any convex cross view mirror to be at least 39 inches from the seated driver. The agency welcomes comments about the proposed requirement and problems associated with accommodation distance.

The agency notes that the proposal in S9.3(b)(3) to prohibit discontinuities in a mirror surface's slope essentially restates current requirements in S9.2(a). Based on the VRTC report and docket comments, the agency has tentatively determined that this provision continues to be worthwhile. Retaining the prohibition on mirror discontinuities would prevent mirrors in which the angle was reserved, thus protecting against unreasonable image distortion. The agency welcomes comments about the merits of this provision.

The agency is also proposing in S9.3(b)(4) to require each mirror system to be installed with a stable support designed to dampen vibration. The purposes of this proposal is to ensure a clear and properly focused image by preventing mirrors from vibrating unreasonably and by reducing the likelihood that mirrors become misaligned. Several commenters explained that such misalignment reduces a driver's ability to see children in potentially dangerous locations around a stopped school bus. The agency requests comments on whether this proposed requirement is necessary and whether it could be made more precise.

NHTSA is proposing in S9.3(b)(5) to require each convex cross view mirror with a radius of curvature less than 35 inches to be marked with a warning that these mirrors are not designed to be used while the vehicle is in motion. This proposal is based on the VRTC report's finding that school bus drivers frequently use cross views mirrors as driving mirrors as well as pedestrian detection mirrors, even though these mirrors are only designed to see pedestrians while the bus is stopped. Given the distortion and minification inherent with such mirrors, the agency has tentatively determined that a warning is necessary to inform drivers that these mirrors are not designed for use while the vehicle is in motion. While the agency is proposing to require this message be between 1/2 to 3/4 of an inch high along the top of the mirror, it welcomes comments about the content, size and location for this warning. Other places the agency has considered for the warning include near the bus' instrument panel, near the interior rearview mirror, and near the driver's window. The agency also requests comments about whether a seated driver would be able to see lettering ½ to ¾ inches high on the mirror.

Along with those requirements, the agency is proposing performance requirements in S9.4 to ensure that a driver can recognize that an image in a mirror represents a child. These proposed provisions are designed to prevent mirror designs that would result in images that were too distorted to assist the driver in detecting the presence of student pedestrians around the school bus. According to the VRTC report and other available information, while a high level of image quality is not necessary for a bus driver to become aware that the school bus should not be moved because a child is in the danger zone, the image nevertheless must be of a minimum quality. To address the agency's concern about image quality, S9.4(a) would specify criteria to ensure that a driver could detect that an image in a mirror is a child. Section S9.4(a) would require that the separation between the edge of each image of a cylinder and the edge of the effective mirror surface must be not less than 3.0 minutes of arc. This proposal stems from the agency's finding that the most difficult images to recognize are elongated ones near the mirror's curved reflective edge.

In addition, section S9.4(b) would require that for the image of cylinder N (the cylinder perpendicular to and 12 feet away from the rear right axle), the angular size of its longest dimension must be not less than 9 minutes of arc and the angular size of its shortest dimension be not less than 3 minutes of arc. The purpose of this requirement would be to ensure that the image was not unreasonably elongated, thus preventing the driver from being able to identify an image of a child in the mirror. According to the VRTC report and the agency's in-house study, drivers have the most difficulty seeing images of objects near the rear right wheel because certain convex crossview mirrors unreasonably elongate the image. The agency thus has tentatively determined that this provision focusing on Cylinder N is necessary to ensure that a driver can identify students near the rear right of the bus.

NHTSA requests comments about the proposals in S9.4 addressing image quality. Would the proposed requirements protect against unreasonable distortion? Would existing convex crossview mirror systems be able to comply with these proposals? Are there alternative ways to specify requirements that would protect against unreasonable distortion?

Based on the VRTC report and other agency findings, the agency is proposing certain test procedures to test mirror systems. In S13.1(a) through (g), the agency proposes that the test cylinders used to represent student pedestrians be placed at specified locations near the bus's front wheels, front bumper, and locations forward of the bus. Cylinders would also be placed near the front right and left wheels and near the right wheel. The agency selected these locations based primarily on narratives in the NAS report and docket comments, the VRTC report, Ohio's new requirement, and the Eleventh National Conference of School Transportation. The principal difference between NHTA's proposal and the requirement of Ohio and the Eleventh National Conference on School Transportation is that the agency's proposal sets forth specific locations, as illustrated in Figure 2 and explained in S13.1, and contains test procedures for showing compliance with the requirements. The agency requests comments about whether the placement of the cylinders reasonably represent locations where student pedestrians are struck by school buses. In particular, even though the agency tentatively decided not to require cylinders by the rear left wheels because such incidents apparently do not occur there, the agency welcomes comments about whether this area poses a safety problem.

In S13.1, the agency proposes that the test cylinders used to represent student pedestrians generally be one foot high and one foot in diameter. This proposed size is based on the VRTC report's recommendation that explaining that children struck by school buses were low to the ground. An exception would be that cylinder N, the cylinder placed 12 feet to the right of the rear right wheel, would be three feet high and one foot in diameter. The agency has tentatively determined that it is necessary to have this cylinder have such proportions to measure the elongation effects addressed in S9.4. The agency welcomes comments about the dimensions of the test cylinders.

Section S13.1 also proposes that the test cylinder be a color which provides a high contrast with the surface on which the bus is parked. According to the VRTC report, such a color would facilitate compliance testing. The agency requests comments about what color would provide a high contrast with the ground and whether a specific color should be specified.

In S13.2, the agency proposes to specify that testing be done relative to the center point of the eye location of a 25th percentile adult female represented by a two dimensional manikin. The agency selected this size of driver because such a driver tends to have a poorer direct field-of-view near the bus than a taller driver does. In addition, pursuant to S13.4 and S13.5, observations and photographs would be taken of the cylinders 6 inches forward, left, and right of the center of driver's eye location to account for head movements. The agency invites comments about the appropriateness of this specification.

The agency is proposing to specify test procedures in S13.4 and S13.5 to determine that a seated driver can see, either directly or through mirrors, at least the tops of cylinders placed at critical areas around the bus. These provisions would be consistent with the

standard's underlying purpose which is to ensure that a school bus driver is aware of student pedestrians around his or her bus when it is stopped. The agency has tentatively determined that the test procedures would implement the proposal's field-of-view and image quality requirements. The VRTC report indicated that different school bus designs afford different levels of direct visibility. Accordingly, a school bus would be tested first pursuant to S13.4 to determine the extent to which the cylinders are directly visible from the driver's eye location.

A school bus would then be tested according to section S13.5 to determine whether cylinders not directly visible are nevertheless visible when viewed from the driver's eye location through the bus's mirror system. Section S13.5(a) would require that a chart (as described in Figure 3) be placed above each appropriate mirror. The comparison chart would serve as a point of reference in evaluating the image size and amount of distortion of cylinders visible in a mirror. A photograph of the appropriate mirror and the adjacent comparison chart would then be taken pursuant to S13.5(b). The agency welcomes comments about the proposed test procedure.

Additional Questions About Mirror Systems

NHTSA seeks comments on all aspects of the proposed rule to assist the agency in developing a final rule for field-of-view requirements around school buses. In addition to questions posed earlier in the notice, the agency invites comments about the following matters:

1. The agency is especially interested in comments about the proposed test requirements. Is the camera's location appropriate? Can the driver's eye location be established for all types of school bus driver seats? Are the criteria in S9.4 about image distortion reasonable?

2. Since some convex cross view mirrors are used as driving mirrors, should the part of the mirror used for driving, i.e., the surface providing fields-of-view of the left and right sides of the bus, have a minimum permissible radius of curvature so that drivers can better judge location and closing velocity of other vehicles? If so, what should the minimum radius of curvature be?

3. Since the upper portion of some cross view mirrors have no advantage as far as student detection or as a driving aid, should it be blackened out or cut off to reduce the amount of glare reflected to the drivers eyes? Are there any benefits for permitting the retaining of this part of the mirror?

4. Given the size and location of some convex cross view mirrors, would dangerous blind spots in the driver's direct field-of-view be created by the mirrors?

5. Given the location of some cross view mirror designs relative to turn signals and other school bus lights, would there be reflective light from turn signals flashing into the driver's eye?

6. Is it necessary to require adjustable mounting brackets for all types of cross view mirrors? Do non-adjustable brackets reduce the amount of vibration of the mirror while driving or idling?

Costs

In the ANPRM, the agency made initial cost estimates for the various devices, including mirror systems, based on supplier aftermarket price quotations. The ANPRM stated that the unit cost for a convex cross view mirror with a bracket plus installation would range from $52 to $107.

While the docket comments provided little specific cost data, the agency has obtained the following list of approximate mirror and bracket prices (and in parenthesis the number of items with which a bus is usually equipped) for various types of mirrors:

* 8" (26" ROC) convex mirror heads	$13.50	(4)	
Cross view brackets	$13.10	(2)	
Side view brackets	$2.50	(2)	
	$85.20		
* 8" (17" ROC) convex mirror heads	($6.70)	(4)	
Cross view brackets	$13.10	(2)	
Side view brackets	$2.50	(2)	
	$58.00		
* 8" × 14" banana-shaped mirror and bracket	$38.21	(2)	= $76.42
* 8" × 12" quadrispheric "Bus Boy" mirror heads	$19.90	(2)	
brackets	$40.80	(2)	
	$121.40		
* 8" elliptical mirror heads	$15.95	(2)	
brackets	$13.10	(2)	
	$58.10		

The agency notes that given the proposal's field-of-view approach, the choice of how to achieve compliance is at the manufacturer's or school bus user's discretion. Since nearly all States currently require their school buses to have more mirrors than required by FMVSS No. 111, the cost of complying with the proposed changes should be minimal depending on the selection of mirrors by the States and local users and on the current State mirror specifications. For example, States currently specifying four 8" (18" ROC) convex mirrors on cross view tripods, at a cost of $58.00, could switch to a pair of eliptical mirrors which cost nearly the same—$58.10.

In the fall of 1989, Blue Bird and Thomas Built provided the agency with information about current State requirements for school bus mirrors. Based on this information, 26 States require left and right hand 8" convex cross view mirrors; 27 States currently require left and right hand 8" convex rear view mirrors (21 of these States are also included in the 26 States that require dual convex cross view mirrors); 7 States currently require either 10" convex mirrors or elliptical mirrors on each side of the bus; and 2 States currently require an elliptical mirror on one side and an 8" convex mirror on the other side as cross view mirrors.

NHTSA requests comments about the costs of this proposal to school bus users. It also requests information about current State requirements for school bus mirrors.

Leadtime Requirements

The agency believes that many mirror systems are now available which would comply with the proposed field-of-view requirements. Therefore, there do not appear to be leadtime constraints from that perspective. Nevertheless, manufacturers and school bus users should be afforded time to investigate and select how they wish to comply with the new field-of-view requirements. Accordingly, the agency is proposing an effective date of 12 months after publication of the final rule.

Equipment Discussed in the ANPRM But Not Proposed in this Notice: Crossing Control Arms and Sensors

In response to the ANPRM, commenters discussed two general categories of equipment other than mirrors. The first category included crossing control arms that are designed to keep children within a school bus driver's direct field-of-view. The second category included various sensing devices designed to alert the driver to the presence of children around the school bus.

Commenters had mixed views about requiring crossing control arms on school buses. Virginia, which uses these devices as a "backup" means of helping drivers keep students in direct field-of-

view, stated that they are helpful, but not perfect in compensating for human failures. Thomas Built's experience with these devices was favorable. In contrast, Connecticut, Washington, and Volusia County were wary about requiring these devices. Other commenters cautioned the agency about operational problems with crossing control arms. Blue Bird stated that malfunctions and misuse with these devices would likely occur.

While NHTSA estimated that the unit cost for crossing control arms would range between $184 and $360, Blue Bird estimated that each crossing control arm would cost between $185 and $310.

After reviewing these comments, the agency has determined not to propose requiring these devices on school buses. The agency notes that a crossing control arm does not provide school bus drivers with a positive means for detecting the presence of a pedestrian. Instead, a crossing control arm merely offers a backup device to help keep children in areas more easily observable by the driver. The agency believes that improving mirror systems offers a larger potential benefit to improving school bus pedestrian safety. Nevertheless, States which favor this device should continue to install them on school buses.

Several commenters, typically equipment manufacturers, submitted information on various types of sensing devices and video systems. This information was generally of a marketing nature suggesting that their device was the best or only way of providing school bus drivers with complete awareness of children outside of school buses. Another device, an automatic braking system, was touted, as a "fail-safe system" for reducing the potential for personal injury.

Other commenters, especially States and bus manufacturers, commented that these systems are not so effective or reliable as claimed. Maine, Virginia, and Washington opposed these systems as being costly and potentially ineffective. Based on its evaluations of proximity sensors, including motion detectors, doppler radar detectors, and ultrasonic detectors, Blue Bird reported problems such as limited range of coverage, limited or excessive sensitivity, unreliability, and poor durability. Based on similar testing, Thomas Built concluded that each system has significant drawbacks.

Based on its review of the comments, the agency has determined that it would be inappropriate to require sensing devices, video monitors, or similar crash avoidance equipment on school buses. Requiring these devices, in addition to requiring improved mirror systems, would substantially increase compliance costs without significantly increasing safety benefits. As for audible back-up alarms to alert people that a bus is in reverse, there are insufficient data to indicate that children are being struck in such situations, especially since school bus routes are designed to have the bus travel forward only. Nevertheless, if States investigate and pilot test these devices, the resulting information may be prove useful for school bus safety.

Comments on Behavioral and Training Programs

In response to the ANPRM's questions about training programs for drivers and students, several commenters expressed support for such programs. The Volusia County Schools believed that driver training provides a better return for the money than purchasing crossing control arms and sensors. The Michigan Department of Education (Michigan) requested that NHTSA review California's program requiring elementary school children be escorted when crossing in front of school buses. In comments on the stop signal arm proposal (55 FR 3620, February 2, 1990), the California Association of School Transportation Officials stated that its driver training program provides the best method of protecting student pedestrians. NSTA supported driver and pupil training programs.

NHTSA continues to support driver, student, and public education programs as a means of reducing school bus pedestrian injuries and fatalities. Given the limited nature of school budgets and the sentiments expressed by California, the agency does not think it appropriate to mandate a large amount of expensive equipment on school buses since doing so could reduce the funds available for education and training. The agency requests information on the extent to which school bus drivers need special training in the use of mirrors.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has considered the costs and other impacts of this proposal, and a Preliminary Regulatory Evaluation (PRE) has been prepared and placed in the docket. Based on this evaluation, the agency has determined that the proposal is not "major" within the meaning of Executive Order 12291. However, it is "significant" within the meaning of the Department of Transportation's regulatory policies and procedures.

As explained in the PRE, the additional cost of installing a pair of convex cross view mirrors on a new school bus would range from $0 to $63 per school bus. Given that 38,000 new school buses are produced each year, the aggregate additional cost of installing a pair of convex cross view mirrors on the fleet of new school buses would range from $0 to $2,394,000. The agency further notes that since nearly all States now require school buses to have more mirrors than required by FMVSS No. 111, the costs of complying with this proposal could even result in a cost savings, if mirrors currently being selected cost more than mirrors only permissible under the proposed standard. As elaborated in the "background" section of this notice, an average of 26 students are fatally injured and another 283 are injured when struck by their own school bus. While the effectiveness of upgrading the requirements for school bus mirrors cannot be conclusively established, accounts in the NAS report and docket comments indicate that some injuries would be avoided.

Regulatory Flexibility Act

NHTSA has considered the effects of this action under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities. School bus manufacturers are generally not small businesses within the meaning of the Regulatory Flexibility Act. Small governmental units and small organizations are generally affected by amendments to the Federal motor vehicle safety standards as purchasers of new school buses. However, this proposal would not typically increase the cost of school buses, since these entities currently purchase school buses with comparably priced mirror systems. In addition, some mirror manufacturers may qualify as small businesses within the meaning of the Regualtory Flexibility Act. However, any adverse impact from this proposal on small entities via increased cost would be minimal at most. The rulemaking might even be beneficial to them since it would provide manufacturers and school bus owners and opreators greater flexibility in determining which mirror systems to use. Accordingly, the agency has determined that preparation of an initial regulatory flexibility analysis is unnecessary.

Executive Order 12612 (Federalism)

This rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and NHTSA has determined that it does not have sufficient federalism

implications to warrant preparation of a Federalism Assessment.

In its analysis, the agency considered the proposal's likely effect on the States and possible alternatives to the rulemaking. The agency has determined that virtually all States require school buses to be equipped with more mirrors than the current FMVSS No. 111 requires. As this preamble explained earlier, the proposal would provide general performance oriented requirements that the States may exceed. Although the proposal would supercede the current school bus mirror requirements of 47 States, any required State regulatory changes will only involve a relatively minor administrative or legislative action that should not require extensive discussion or debate, since the change would improve the level of driver visibility. In addition, because the proposal would eliminate current specific requirements which serve to prohibit certain mirror designs, the proposal would provide additional flexibility to the States. The agency further notes that the proposal is similar to the recommendation approved by 86 percent of the State representatives at the 11th National conference on School Transportation. In addition, State commenters to the ANPRM favored such field-of-view oriented requirements. NHTSA accordingly does not expect any significant adverse impact on the States as a result of this rulemaking.

National Environmental Policy Act

NHTSA has also analyzed this proposed rulemaking action for purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR part 512).

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions or further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicle.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, 49 CFR Part 571 would be amended, as follows:

1. The authority citation for part 571 of title 49 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. In § 571.111, S4 would be amended by adding the following definition in alphabetical order.

§ 571.111 Standard No. 111; Rearview mirrors

* * * * *

Effective mirror surface means the portions of a mirror that reflect images, excluding the mirror rim or mounting brackets.

* * * * *

§ 571.111 [Amended]

3. In § 571.111, S9 would be revised to read as follows:

S9 Requirements for School Buses. When a school bus is tested in accordance with the procedures of S13, it shall meet the requirements of S9.1 through S9.4.

S9.1 Outside Rearview Mirrors. Each school bus shall have two outside rearview mirror systems: System A and System B.

S9.2 System A shall be located so that the portion of the system on the bus's let side, and the portion on its right side, each:

(a) Includes at least one mirror of unit magnification;

(b) Includes one or more mirrors which together have not less than 50 square inches of reflective surface; and

(c) Provides, at the driver's eye location, a view of:

(1) For the mirror on the right side of the bus, the entire top surface of cylinder L in Figure 2, and of

(2) That area of the ground which extends rearward from the mirror surface not less than 200 feet.

(3) For the mirror on the left side of the bus, that area of the ground which extends rearward from the mirror surface not less than 200 feet.

S9.3(a) For each of cylinder A through L whose entire top surface is not directly visible from the driver's eye location, System B shall provide, at that location:

(1) A view of an image of the entire top surface of that cylinder.

(2) The view of the ground provided at the driver's eye location by system B shall overlap with the view of the ground provided by system A.

(b) Each mirror installed in compliance with S9.3(a)(1) shall meet the following requirements:

(1) Each mirror shall have a projected area of at least 40 square inches, as measured on a plane at a right angle to the mirror's axis.

(2) Each mirror shall be designed and located such that the distance from the center point of the eye location of a 25th percentile adult female to the center of the mirror plus one-half the smallest radius of curvature on the mirror surface shall be at least 39 inches.

(3) Each mirror shall have no discontinuities in the slope of the surface of the mirror.

(4) Each mirror system shall be installed with a stable support designed to dampen vibration.

(5) Each mirror with an average radius of curvature less than 35 inches shall be permanently and indelibly marked at the upper edge of its reflective surface in letters not less than ½ of an inch nor more than ¾ of an inch high with the words "THIS MIRROR IS NOT DESIGNED FOR USE WHILE THE VEHICLE IS IN MOTION."

S9.4(a) Each image required by S9.2(c)(1) or S9.3(a)(1) to be visible at the driver's eye location shall be separated from the edge of the effective mirror surface of the mirror providing that image by a distance of not less than 3 minutes of arc.

(b) The image required by S9.3(a)(1) of cylinder N shall meet the following requirements:

(1) The angular size of the shortest dimension of that cylinder's image shall be not less than 3 minutes of arc; and

(2) The angular size of the longest visible dimesion of that cylinder's image shall be not less than 9 minutes of arc.

§ 571.111 [Amended]

5. Section 571.111 would be amended by adding S13, which would read as follows:

S13 School bus mirror test procedures. The requirements of S9.1 through S9.4 shall be met when the vehicle is tested in accordance with the following conditions.

S13.1 Place cylinders at locations as specified in S13.1(a) through S13.1(g) and illustrated in Figure 2. Measure the distances shown in Figure 2 from a cylinder to another object from the center of the cylinder. The cylinders are any color which provides a high contrast with the surface on which the bus is parked. Except for cylinder N, which is 3 feet high and 1 foot in diameter, the cylinders are 1 foot high and 1 foot in diameter.

(a) Place cylinder G, H, and I so that they are tangent to a transverse vertical plane tangent to the forward-most sruface of the bus's front bumper. Place cylinders D, E, F so that their centers are located in a transverse vertical plane that is 6 feet forward of a transverse vertical plane passing through the centers of cylinders G, H, and I. Place cylinders A, B, and C so that their centers are located in a Transverse vertical plane that is 12 feet forward of the transverse vertical plane passing through the centers of cylinders G, H, and I.

(b) Place cylinders, B, E, and H so that their center are in a longitudinal vertical plane that passes through the bus's longitudinal centerline.

(c) Place cylinders A, D, and G so that their centers are in a longitudinal vertical plane that is tangent to the outboardmost edge on the left side of the bus's front bumper.

(d) Place cylinders C, F, and I so that their centers are in a longitudinal vertical plane that is tangent to the outboardmost edge on the right side of the bus's front bumper.

(e) Place cylinder J so that its center is in a longitudinal vertical plane two feet to the left of the longitudinal vertical plane passing through the centers of cylinders A, D, and G and is in the transverse vertical plane that passes through the centerline of the bus's front axle.

(f) Place cylinder K so that its center is in a longitudinal vertical plane two feet to the right of the longitudinal vertical plane passing through the centers of cylinders C, F, and I and is in the transverse vertical plane that passes through the centerline of the bus's front axle.

(g) Place cylinders L, M, and N so that their centers are in the transverse vertical plane that passes through the centerline of the bus's rear axle. Place cylinder L so that its center is in a longitudinal vertical plane that is two feet to the right of the longitudinal vertical plane tangent to the right side of the bus. Place cylinder M so that its center is in a longitudinal vertical plane that is six feet to the right of the longitudinal vertical plane tangent to the right side of the bus. Place cylinder N so that its center is in a longitudinal vertical plane that is twelve feet to the right of the longitudinal vertical plane tangent to the right side of the bus.

BILLING CODE 4910-59-M

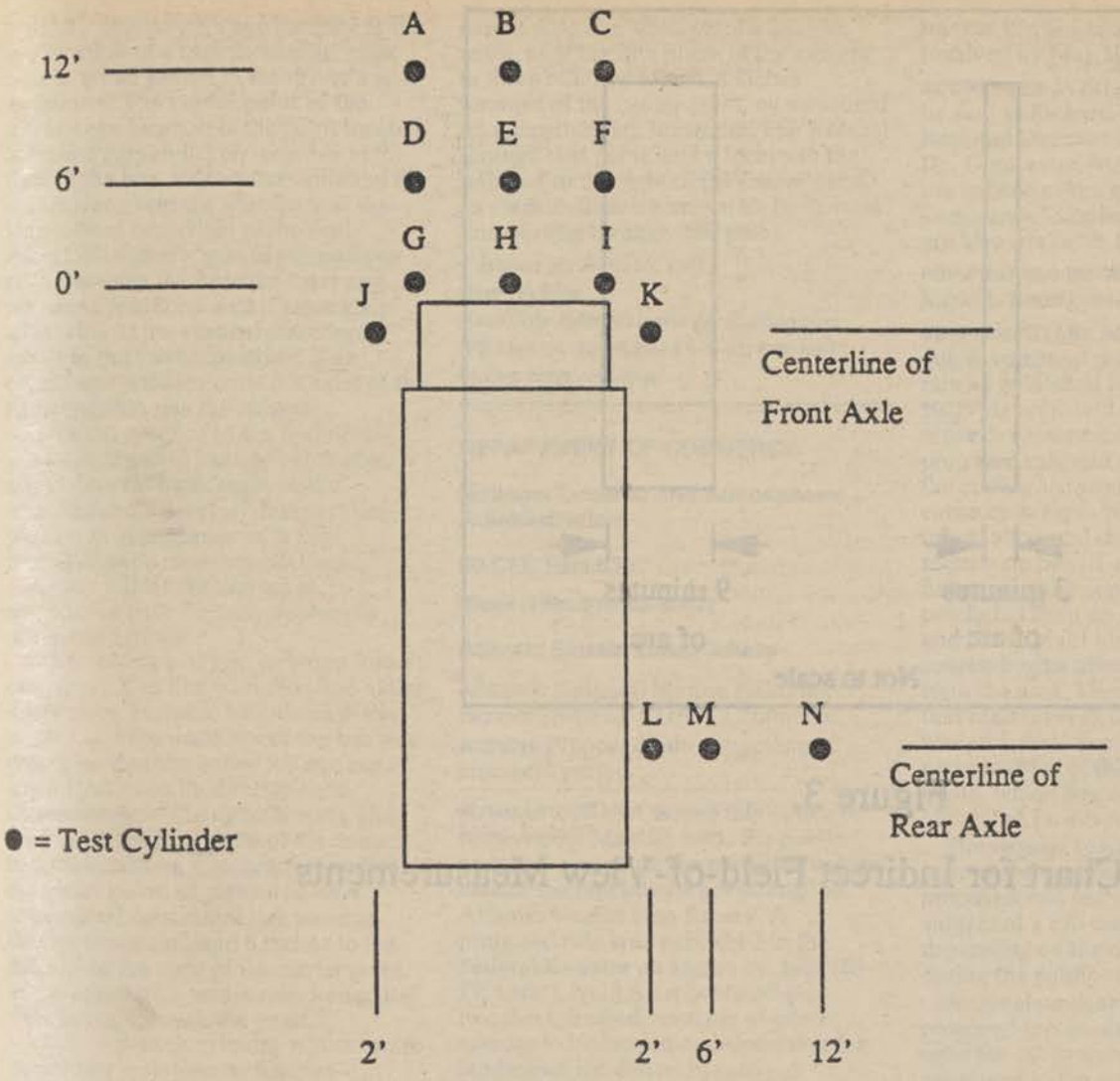

Figure 2.

Location of Test Cylinders for School Bus Field-of-View Test

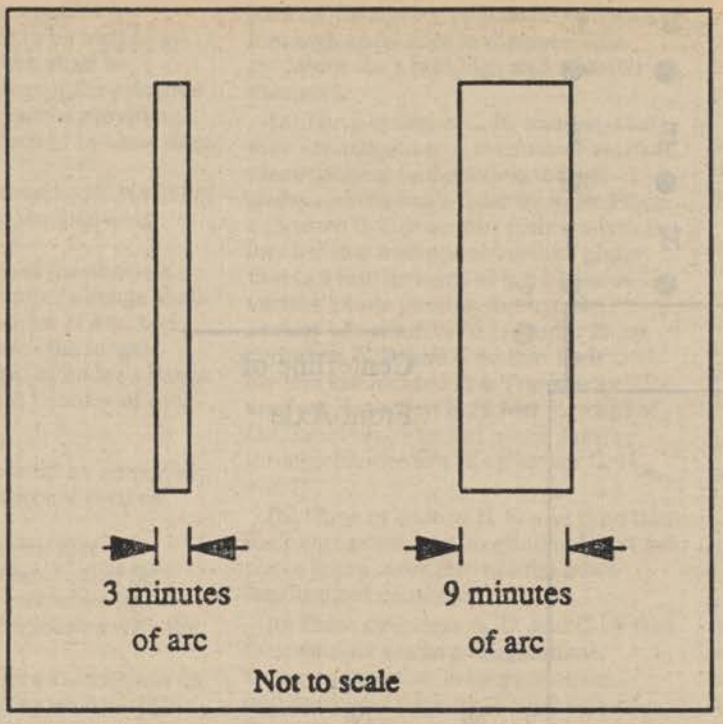

Figure 3.

Comparison Chart for Indirect Field-of-View Measurements

BILLING CODE 4910-59-C

S13.2 The driver's eye location is the eye location of a 25th percentile adult female, when seated in the driver's seat as follows: The center point of the driver's eye location is the point located 27 inches perpendicular, relative to the floor of the bus, to the intersection of the seat cushion and the seat back at the longitudinal centerline of the seat. Adjust the driver's seat to the midway point between the forward-most and rear-most positions, and if separately adjustable in the vertical direction, adjust to the lowest position. If an adjustment position does not exist at the midway point, use the closest adjustment position to the rear of the midpoint. If a seat back is adjustable, adjust the seat back angle to the manufacturer's nominal design riding position in accordance with the manufacturer's recommendations.

S13.3 Adjust the mirrors in accordance with the manufacturer's recommendations.

S13.4 Using a 35 mm or larger format camera with its film plane located at the driver's eye location, look through the camera and the windows of the bus and determine that the entire top surface of any cylinder can be directly seen. Observations of the cylinders are also made with the film plane of the camera in three locations, 6 inches forward of the center point, as measured on a longitudinal, horizontal line passing through that point, and 6 inches to the left, and to the right of the center point, as measured on a transverse, horizontal line passing through the point.

S13.5 For each cylinder whose entire top surface is determined under paragraph 13.4 of this section not to be directly visible at the driver's eye location.

(a) Place a comparison chart (see Figure 3) above the mirror used to view the cylinder.

(b) Photograph the cylinder through the appropriate mirror with the camera located so that the view through its film plane is located at the center point of the driver's eye location, ensuring that the image of the mirror and comparison chart fill the camera's view finder to the extent possible. Photographs are also made with the film plane of the camera in three other locations, 6 inches forward of the center point, as measured on a longitudinal, horizontal line passing through that point, and 6 inches to the left, and to the right of the center point, as measured on a transverse, horizontal line passing through that point.

Issued on: April 25, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-10195 Filed 5-1-91; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[Docket No. 910102-0002]

Atlantic Bluefin Tuna Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: NOAA issues this notice to reopen until May 10, 1991, the public comment period on the proposed rule to amend the regulations governing the Atlantic bluefin tuna fishery. A proposed rule was published in the **Federal Register** on March 11, 1991 (56 FR 10227). NOAA proposes to: (1) Require specified amounts of other species to be landed as a condition for landing an incidental bycatch of Atlantic bluefin tuna in the southern longline fishery; (2) prohibit retention of Atlantic bluefin tuna harvested from the Gulf of Mexico, except by vessels permitted in the Incidental Catch category; (3) reduce the daily catch limit in the Angling category from four to one young school, school, or medium tuna per day; and (4) make other technical revisions to the regulations. The intent of this notice is to ensure that interested persons have sufficient time to comment on the proposed rule.

DATES: Written comments must be received by May 10, 1991.

ADDRESSES: Written comments should be sent to Richard Roe, Northeast Regional Director, NMFS, 1 Blackburn Dr., Gloucester, MA 01930. Clearly mark the outside of the envelope "Tuna Comments." Copies of the proposed rule are also available from this address.

FOR FURTHER INFORMATION CONTACT: Kathi L. Rodrigues, 508-281-9324.

SUPPLEMENTARY INFORMATION: The public comment period on the proposed rule as published March 11, 1991 (56 FR 10227) is reopened until May 10, 1991, in order to receive comments on the proposed rule and a request to change the commencement date of the General category season. NMFS is seeking information and comment on this request on behalf of North Carolina fishermen who contend that they are precluded from an opportunity to fish for and retain giant bluefin because the season begins after giant bluefin migrate from the area. These fishermen argue that their level of catch is expected to be low and, therefore, will not result in early harvest of the General category quota, which has not been fully harvested for several years.

The request to change the commencement date is not a part of the proposed rule but may become the subject of a rulemaking in the future depending on the comments received during the public comment period.

A complete description of the proposed measures and the purpose and need for the proposed action are contained in the proposed rule and are not repeated here. Copies of the proposed rule may be obtained by writing (See **ADDRESSES**) or calling (See **FOR FURTHER INFORMATION CONTACT**).

Authority: 16 U.S.C. 971 *et seq.*

Dated: April 26, 1991.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-10331 Filed 5-1-91; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 56, No. 85
Thursday, May 2, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 91-018N]

SLD Policy Memoranda; Semi-Annual Listing

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document lists and makes available to the public memoranda issued by the Standards and Labeling Division (SLD), Regulatory Programs, Food Safety and Inspection Service (FSIS), which contain significant new applications or interpretations of the Federal Meat Inspection Act, the Poultry Products Inspection Act, the regulations promulgated thereunder, or departmental policy concerning labeling.

FOR FURTHER INFORMATION CONTACT: Ashland L. Clemons, Director, Standards and Labeling Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250 (202) 447-6042.

SUPPLEMENTARY INFORMATION: FSIS conducts a prior approval program for labels or other labeling (specified in 9 CFR 317.4, 317.5, 381.132 and 381.134) to be used on federally inspected meat and poultry products. Pursuant to the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), and the regulations promulgated thereunder, meat and poultry products which do not bear provided labels may not be distributed in commerce.

FSIS's prior label approval program is conducted by label review experts within SLD. A variety of factors, such as continuing technological innovations in food processing and expanded public concern regarding the presence of various substances in foods, has generated a series of increasingly complex issues which SLD must resolve as part of the prior label approval process. In interpreting the Acts or regulations to resolve these issues, SLD may modify its policies on labeling or develop new ones.

Significant or novel interpretations or determinations made by SLD are issued in writing in memorandum form. This document lists two SLD policy memoranda which were issued during the period of October 1, 1990, through April 1, 1991.

Persons interested in obtaining copies of the following SLD policy memoranda, or in being included on a list for automatic distribution of future SLD policy memoranda, may write to: Printing and Distribution Section, Paperwork Management Branch, Administrative Services Division, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

Memo No.	Title and date	Issue	Reference
041B	Labeling of boneless ham products, whole muscle roast beef products, and boneless poultry products [except turkey ham (9 CFR 381.171)] containing ground and/or emulsified trimmings, February 15, 1991.	Under what circumstances are the product names for boneless ham products, whole muscle beef products for roasting, and boneless poultry products acceptable without qualification, and when must the product names be qualified to reflect the use of like ground and emulsified trimmings?	(Supersedes Policy Memo 041A); 9 CFR 317.2(b)(13), 381.117 and 381.118.
090B	Protective Coverings, December 18, 1990.	Under what circumstances can immediate containers be considered protective coverings?	(Supersedes Policy Memo 090A); 9 CFR 317.1, 318.17, FSIS Form 7227-1.

The SLD policy specified in these memoranda will be uniformly applied to all relevant labeling applications unless modified by a future memoranda or more formal Agency actions. Applicants retain all rights of appeal regarding decisions based upon these memoranda.

Done at Washington, DC, on April 26, 1991.

Ashland L. Clemons,

Director, Standards and Labeling Division, Regulatory Programs, Food Safety and Inspection Service.

[FR Doc. 91-10319 Filed 5-1-91; 8:45 am]

BILLING CODE 3410-DM-M

Forest Service

Expanded Animal Damage Control Proposal, Dixie National Forest, UT

AGENCY: Forest Service, USDA.

ACTION: Cancellation of notice of intent to prepare an environmental impact statement.

SUMMARY: The Notice of Intent to prepare an Environmental Impact Statement for expanded animal damage control methods on the Dixie National Forest, Utah, published in the December 11, 1989 **Federal Register** (54 FR 50786), is hereby rescinded.

FOR FURTHER INFORMATION CONTACT: Robert H. Meinrod, Range/Wildlife Branch Chief, Dixie National Forest, P.O. Box 580, Cedar City, UT 84721; telephone (801) 865-3700.

Dated: April 22, 1991.

Robert H. Meinrod,

Acting Forest Supervisor.

[FR Doc. 91-10323 Filed 5-1-91; 8:45 am]

BILLING CODE 3410-11-M

Easton Ridge Timber Sale, Wenatchee National Forest, Kittitas County, WA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, USDA, will prepare an environmental impact statement (EIS) to analyze and disclose the environmental impacts of a site-specific proposal for the Easton Ridge Timber Sale. The project is located within the Thorp Mountain Roadless Area in portions of the Yakima River, Dommery and Silver Creek drainages on the Cle Elum Ranger District of the Wenatchee National Forest. The purpose of the EIS will be to develop and evaluate a range of alternatives for timber and road construction levels. The alternatives will include a no action alternative, involving no harvest or construction, and additional alternatives to respond to issues generated during the scoping process. The proposed project will be in compliance with the direction in the Wenatchee National Forest Land and Resource Management Plan which provides the overall guidance for management of the area and the proposed projects of the next ten years. This Forest Service proposal is scheduled in the Forest Plan for a fiscal year 1991 timber sale. The agency invites written comments on the scope of this project. In addition, the agency gives notice of this analysis so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the management of this project area should be received by May 1, 1991.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to John W. Lowery, District Ranger, Cle Elum Ranger District, 803 West Second, Cle Elum, WA 98922.

FOR FURTHER INFORMATION CONTACT: Questions and comments about this EIS should be directed to John W. Lowery, District Ranger, Cle Elum Ranger District, 803 West Second, Cle Elum, WA 98922; phone (509) 674–4411.

SUPPLEMENTARY INFORMATION: The Easton Ridge Timber Sale is displayed in the Wenatchee National Forest Land and Resource Management Plan, page A–28. The major issues that have been identified to date reflect the meeting of visual quality objectives, effects on wildlife habitat, effects on dispersed recreation, and on adjacent landowners. The project is also within the Thorp Mountain roadless area which is approximately 15,000 acres. The proposed action involves approximately 4.8 million board feet of timber and 2.4 miles of road construction. There are approximately 147 acres proposed for harvest in a 500 acre planning area. Harvesting methods proposed include 25 acres of clearcut and 122 acres of extended shelterwood to meet visual resource management objectives. Proposed logging systems include skyline and tractor yarding.

Public participation will be especially important at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, and other individuals of organizations who may be interested in or affected by the proposed actions. This information will be used in preparation of the drafts EIS. The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental process.
4. Exploring additional alternatives.
5. Identifying potenitial environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The drafts EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by August 15, 1991. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. EPA will publish a notice of availability of the draft EIS in the **Federal Register.**

The comment period on the draft EIS will be 45 days from the date the EPA notice appears in the **Federal Register.** It is very important that those interested in the management of the Wenatchee National Forest participate at that time.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points).

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of the draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 f. 2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980) Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible.

The final EIS is scheduled to be completed by September, 1991. In the final EIS, The Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding this proposal. John W. Lowery, District Ranger, Cle Elum Ranger District, Wenatchee National Forest, is the responsible official. As the responsible official he will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service appeal regulations (36 CFR part 217).

Dated: April 5, 1991.

John W. Lowery,

District Ranger.

[FR Doc. 91–10374 Filed 5–1–91; 8:45 am]

BILLING CODE 3410–11–M

Stafford-Bear Timber Sale, Wenatchee National Forest, Kittitas County, WA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, USDA, will prepare an environmental impact statement (EIS) to analyze and disclose the environmental impacts of a site-specific proposal for the Stafford-Bear Timber Sale. The project is located within the Teanaway Roadless Area in portions of the Stafford and Jack Creek

drainages on the Cle Elum Ranger District of the Wenatchee National Forest. The purpose of the EIS will be to develop and evaluate a range of alternatives for timber harvest and road construction levels. The alternatives will include a no action alternative, involving no harvest or construction, and additional alternatives to respond to issues generated during the scoping process. The proposed project will be in compliance with the direction in the Wenatchee National Forest Land and Resource Management Plan which provides the overall guidance for management of the area and the proposed projects for the next ten years. This Forest Service proposal is scheduled in the Forest Plan for a fiscal year 1991 timber sale. The agency invites written comments on the scope of this project. In addition, the agency gives notice of this analysis so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope and implementation of this proposal must be received by June 15, 1991.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to John W. Lowery, District Ranger, Cle Elum Ranger District, 803 West Second, Cle Elum, WA 98922.

FOR FURTHER INFORMATION CONTACT: Questions and comments about this EIS should be directed to John W. Lowery, District Ranger, Cle Elum Ranger District, 803 West Second, Cle Elum, WA 98922; phone (509) 674-4411.

SUPPLEMENTARY INFORMATION: The Stafford-Bear Timber Sale is displayed in the Wenatchee National Forest Land and Resource Management Plan, page A-29. The major issues that have been identified to date reflect the meeting of visual quality objectives, effects on wildlife habitat, effects on dispersed recreation, and on adjacent landowners. The project is also within the Teanaway roadless area which is approximately 66,000 acres. The proposed action involves approximately 1.3 million board feet of timber and 3.5 miles of road construction. There are approximately 54 acres proposed for harvest in a 1000 acre planning area. Harvesting methods proposed include 39 acres of clearcut and 15 acres of commercial thinning. Proposed logging systems include skyline and tractor yarding.

Public participation will be especially important at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, and other individuals or organizations who may be interested in or affected by the proposed actions. This information will be used in preparation of the draft EIS. The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevent previous environmental process.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by August 15, 1991. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. EPA will publish a notice of availability of the draft EIS in the Federal Register.

The comment period on the draft EIS will be 45 days from the date the EPA notice appears in the Federal Register. It is very important that those interested in the management of the Wenatchee National Forest participate at that time.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points).

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 f. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible.

The final EIS is scheduled to be completed by September, 1991. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding this proposal. John W. Lowery, District Ranger, Cle Elum Ranger District, Wenatchee National Forest, is the responsible official. As the responsible official he will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service appeal regulations (36 CFR part 217).

Dated: April 5, 1991.

John W. Lowery,

District Ranger.

[FR Doc. 91-10375 Filed 5-1-91; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Strawberry School Critical Area Treatment RC&D Measure Plan, Lawrence, County, AR

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Council on Environmental Quality Guidelines (40 CFR part 1500), the Soil Conservation Service Guidelines (7 CFR part 650), and the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Strawberry School RC&D Measure Plan, Lawrence County, Arkansas.

FOR FURTHER INFORMATION CONTACT: Ronnie Murphy, State Conservationist, Soil Conservation Service, room 5404 Federal Office Building, 700 West

Capitol Avenue, Little Rock, Arkansas 72201. Telephone: (501) 324–5445.

Strawberry School Criterial Area Treatment RC&D Measure Plan, Arkansas, Notice of Finding of No Significant Impact

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Ronnie Murphy, state conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The plan consists of 1.0 acre of criterial area treatment which includes contoured level benches on the playground area. These benches will be filled, shaped and slightly graded to safely dispose of water. Suitable material will be applied to the surface around playground equipment for erosion control. Installation of a box culvert will be done to safely conduct water from higher elevations to a waterway and reduce the amount of water running over the playground area.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Ronnie Murphy.

Strawberry School Critical Area Treatment RC&D Measure Plan, Arkansas, Notice of a Finding of No Significant Impact

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.)

Dated: April 25, 1991.

William H. Mann,

State Administrative Officer.

[FR Doc. 91–10389 Filed 5–1–91; 8:45 am]

BILLING CODE 3410–16–M

COMMISSION ON CIVIL RIGHTS

Agenda and Public Meeting of the California Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the California Advisory Committee to the Commission will convene at 8:30 a.m. and adjourn at 10 a.m. on May 18, 1991, at the El Paso Marriott Hotel, 1600 Airway Boulevard, El Paso, Texas 79925. The purpose of the meeting is to discuss border violence and the California State University system project.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson, Michael Carney or Philip Montez, Director of the Western Regional Division (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 26, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91–10368 Filed 5–1–91; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–605]

Certain Carbon Steel Butt-Weld Pipe Fittings From Taiwan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On March 11, 1991, the Department of Commerce ("the Department") published the preliminary results of its administrative review of the antidumping duty order on carbon steel butt-weld pipe fittings from Taiwan. The review covers shipments of this merchandise to the United States from two exporters during the period December 1, 1987 through November 30, 1988. As a result of this review, the Department has determined that dumping margins exist with respect to the two exporters.

EFFECTIVE DATE: May 2, 1991.

FOR FURTHER INFORMATION CONTACT: James Rice or Alain Letort, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–3793 or telefax (202) 377–1388.

SUPPLEMENTARY INFORMATION:

Background

On March 11, 1991, the Department published in the **Federal Register** the preliminary results of its administrative review of the antidumping duty order on butt-weld pipe fittings from Taiwan (56 FR 10234). We gave interested parties an opportunity to comment on the preliminary results of the administrative review. We received no comments. We have now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Act").

This review covers shipments made by two exporters of carbon steel butt-weld pipe fittings from Taiwan to the United States during the period December 1, 1987 through November 30, 1988. The exporters covered by this review are C.M. Pipe Fittings Mfg. Co., Ltd. ("C.M.") and Rigid Industries Co., Ltd. ("Rigid").

Scope of the Review

Imports covered by this review are shipments of carbon steel butt-weld type pipe fittings, other than couplings, under 14 inches in inside diameter, whether finished or unfinished, that have been formed in the shape of elbows, tees, reducers and caps, and if forged, have been advanced after forging. These advancements may include one or more of the following: coining, heat treatment, shot blasting, grinding, die stamping or painting.

Until January 1, 1989, this merchandise was classifiable under item number 610.8800 of the TSUSA. Since that date, these products have been classifiable under HTS item number 7307.93.3000. As with the TSUSA number, the HTS number is provided for convenience and customs purposes. The written product description remains dispositive.

Fair Value Comparisons

To determine whether sales in the United States of carbon steel butt-weld pipe fittings from Taiwan were made at less than fair value, we compared the

United States price with the foreign market value. Since Rigid had no home-market sales, and C.M. did not have a viable home market, we compared each company's U.S. sales to sales in the largest third-country market, which in both cases was Canada.

United States Price

In accordance with section 772(b) of the Act, we based United States price on purchase price, because the merchandise was sold to unrelated purchasers in the United States prior to its importation. We calculated purchase price based on c. & f., c.i.f., or f.o.b., duty-paid, packed prices to U.S. customers.

We made deductions from purchase price, where appropriate, for foreign inland freight, foreign inland insurance, ocean freight, brokerage and handling charges, and bank charges.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on delivered or ex-factory packed prices to unrelated purchasers in Canada. We made deductions to foreign market value, as appropriate, for foreign inland freight, foreign inland insurance, ocean freight, brokerage and handling charges, and bank charges. In order to adjust for differences in packing between the two markets, we deducted the packing costs for Canada and added U.S. packing costs. We made adjustments for differences between Canadian and U.S. commissions. Where there was no identical product in the third country with which to compare a product sold in the U.S. market, the Department selected the most similar product for fair value comparisons. We made no adjustment for differences in the physical characteristics of the merchandise because neither C.M. nor Rigid claimed any.

Petitioners alleged that sales in the third-country market were made at prices below the cost of producing the merchandise.

C.M.

For purposes of determining whether third-country sales were above the cost of production, we calculated the COP on the basis of C.M.'s cost of materials, labor, factory overhead, and general expenses. We relied upon the COP data submitted by C.M. in our analysis, except in the following instances where the costs were not appropriately quantified or valued.

We adjusted material costs for all four products under review, *i.e.*, caps, elbows, reducers, and tees, to reflect the material unit cost and actual yield experienced by the company after deduction of the revenue earned from scrap sales. Company-wide direct labor and factory overhead allocations to each cost center were inappropriate because they were based on a calculation involving 1984 machine time standards. Because C.M. only produces the type of products under review, we used, as best information available, the total machine time used for total production during 1988 by each cost center in allocating direct labor and factory overhead costs to the cost centers. Additionally, we adjusted total factory overhead by deducting the cost of packing materials, because these costs were also included in the submission as packing costs. We adjusted selling, general and administrative (SG&A) expenses by reclassifying certain G&A expenses that were previously misclassified as selling expenses. Because C.M. did not report its interest expense, we included net interest expense as reported in the company's accounting records as best information available. We found all of C.M.'s sales in the third-country to have been above the cost of production.

Rigid

For purposes of determining whether third-country sales were above the cost of production, we calculated the COP on the basis of Rigid's cost of materials, labor, factory overhead, and general expenses. We relied upon the COP data submitted by Rigid in our analysis, except in the following instances where the costs were not appropriately quantified or valued.

We adjusted the allocation of direct labor and factory overhead costs for caps to reflect actual production quantities. Due to clerical errors, standard machine times were incorrectly recorded on factory documents for certain models in the elbow, reducer, and tee cost centers. Therefore, within each cost center, we adjusted the allocation of direct labor and factory overhead costs to each model to agree with the appropriate machine-time standards. Because Rigid did not report its interest expense, we included net interest expense as reported in the company's accounting records as best information available.

We found that 20 percent of Rigid's sales of the subject merchandise in the third-country were at prices below the cost of production, within the meaning of section 773(b) of the Act. We disregarded those sales and used the remaining 80 percent to determine foreign market value.

Verification

We verified the cost-of-production information used in determining whether sales were made at less than the cost of production, in accordance with section 776(b) of the Act. We used standard verification procedures including on-site inspection of the manufacturers' operations and examination of accounting records and other documents containing relevant information.

Final Results of the Review

As a result of our comparison of the United States price to foreign market value, we determine that the following dumping margins exist:

Manufacturer/producer/exporter	Margin percent
C.M.	8.31
Rigid	6.89
Gei Bei [1]	87.30
Chup Hsing [1]	87.30
All Other Manufacturers/Producers/Exporters	8.31

[1] Not subject to this review, margins retained from original investigation.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries.

Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service upon completion of this administrative review.

Further, as provided by section 751(a)(1) of the Tariff Act, the Customs Service shall require a cash deposit of estimated antidumping duties based on the above margins for these firms. For any shipments of this merchandise produced or exported by the remaining known producers and/or exporters not covered in this review, the cash deposit will continue to be at the rate published in the antidumping duty order for those firms. For any future entries of this merchandise from a new producer and/or exporter not covered in the original investigation or this administrative review, whose first shipment occurred after November 30, 1988, and who is unrelated to the reviewed firms or any previously investigated firm, the Customs Service will require a cash deposit of 8.31 percent *ad valorem*.

These deposit requirements are effective for all shipments of carbon steel butt-weld pipe fittings from Taiwan which are entered, or withdrawn from warehouse, for

consumption, on or after the date of publication of this notice.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Commerce Department's regulations (19 CFR 353.22).

Dated: April 25, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-10432 Filed 5-1-91; 8:45 am]

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[A-201-601]

Preliminary Results of Antidumping Duty Administrative Review: Certain Fresh Cut Flowers from Mexico

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: In repsonse to a request by the Floral Trade Council (the petitioner) and four producers/exporters in Mexico, the Department of Commerce is conducting an administrative review of the antidumping duty order on certain fresh cut flowers from Mexico. The review covers exports of this merchandise to the United States during the period April 1, 1989 through March 31, 1990. Based on our review of these exports, we preliminarily find the existence of dumping margins for five firms included in this review.

EFFECTIVE DATE: May 2, 1991.

FOR FURTHER INFORMATION CONTACT: Kate Johnson, Steve Alley, or Shawn Thompson, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-8830, 377-1766, or 377-1776, respectively.

SUPPLEMENTARY INFORMATION:

Scope of Review

Certain fresh cut flowers are defined as standard carnations, standard chrysanthemums, and pompom chrysanthemums. During the period of review, such merchandise was classifiable under Harmonized Tariff Schedule (HTS) numbers 0603.10.7010 (pompom chrysanthemums), 0603.10.7020 (standard chrysanthemums), and 0603.10.7030 (standard carnations). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Background

On April 23, 1987, the Department of Commerce (the Department) published in the **Federal Register** (52 FR 13491) an antidumping duty order on certain fresh cut flowers from Mexico.

In accordance with 19 CFR 353.22(a), the following four producers/exporters requested that the Department conduct an administrative review of this order: Rancho el Aguaje, Rancho el Toro, Florex and Tzitzic Tareta. In addition, the petitioner requested an administrative review for Visaflor and Rancho Mision el Descanso (Rancho Mision). We published a notice of initiation on June 1, 1990 (55 FR 22366). The Department is now conducting the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Sales questionnaires were issued to all companies on October 2, 1990. In addition, the Department issued cost of production questionnaires to Tzitzic Tareta and Florex. A constructed value questionnaire was issued to Rancho el Toro and Rancho el Aguaje on October 5, 1990, after each informed the Department that it had no sales during the period of review (POR) of export quality merchandise in either the home or third-country markets.

Responses to the Department's questionnaire were received from Rancho el Toro on November 16, 1990, Rancho el Aguaje on December 3, 1990, Visaflor on December 5, 1990, Florex and Tzitzic Tareta on December 6, 1990, and Rancho Mision on December 7, 1990. On December 19, 1990, we issued deficiency letters to all companies. Responses to these letters were received on January 14, 1991.

On January 9, 1991, Rancho Mision requested a constructed value questionnaire because it had no sales of standard chrysanthemums in the home or third-country markets. On January 10, 1991, the Department issued that questionnaire to Rancho Mision and gave the company until January 21, 1991, to respond. Rancho Mision never submitted a repsonse to the constructed value questionnaire. Accordingly, on February 4, 1991, we informed this respondent that we would use best information available (BIA) to calculate estimated margins for standard chrysanthemums. See the "Best Information Available" section of this notice for further discussion.

Tzitzic Tareta also failed to respond to the cost of production questionnaire, despite numerous requests that it do so. Therefore, on February 4, 1991, we informed Tzitzic Tareta that we would not verify its responses to the sales questionnaire and that we would use BIA to determine its margin for this review. See the "Best Information Available" section of this notice for further discussion.

The Department conducted verification of the questionnaire responses submitted by four of the respondents (Florex, Rancho el Aguaje, Rancho el Toro, and Rancho Mision) from February 18, 1991, through March 7, 1991. We did not verify the response submitted by Visaflor because it informed the Department on February 24, 1991, the night before verification was scheduled to begin, that it would not participate in the verification. See the "Best Information Available" section of this notice for further discussion.

At verification we discovered that both Rancho el Aguaje and Rancho el Toro maintained cash-based accounting systems. As a result, we were unable to utilize our normal verification techniques to test the completeness of their cost responses. For purposes of this review, we are accepting the data reported by these companies because: (1) Under Mexican law, these companies, as agricultural producers, were not required to maintain their records in a more formal manner, (2) these companies did maintain at least an internal record system which supported the questionnaire responses, (3) at verification, we found no evidence of systematic underreporting of costs, (4) we were able to verify the completeness of other sections of their responses (specifically, we were able to test that all sales were reported because we obtained consecutive growers reports which accounted for all sales to the United States during the POR), and (5) although these companies had never been the subject of a previous review or investigation, they were well prepared for verification and cooperative throughout the process. We note, however, that we may reconsider our decision to accept such data in future review, especially if the manner in which the records are maintained significantly limits our ability to conduct a thorough verification.

Best Information Available

Pursuant to section 776(c) of the Act, the Department is required to use BIA whenever a party to the proceeding refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes the proceeding. In accordance with this

section, we have determined that the use of BIA is appropriate for sales of subject merchandise made by three of the six respondents in this review, as described below. In deciding what to use as best information available, 19 CFR 353.37(b) provides that the Department may take into account whether a party refused to provide requested information. Thus, the Department determines on a case-by-case basis what is best information available. When a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's review, the Department will normally assign to that company the highest margin for the subject merchandise of either (1) The highest margin calculated for that company in any previous review or the original investigation; or (2) the highest calculated margin for any respondent that supplied adequate responses for the current review.

When a company has cooperated with the Department's request for information but fails to provide the information requested in a timely manner or in the form required, the Department will normally assign the affected company the highest margin assigned that company in any previous review or the original investigation.

Tzitzic Tareta

As stated in the "Background" section of this notice, the Department issued the cost of production (section D) questionnaire to Tzitzic Tareta on October 2, 1990 and informed it that it would have to respond to this section of the questionnaire by November 16, 1990. On December 19, 1990 the Department issued a deficiency letter to Tzitzic Tareta in which it repeated the request that Tzitzic Tareta respond to section D. Furthermore, in a meeting held with counsel for Tzitzic Tareta on December 26, 1990 the Department again pointed out that a Section D response was required. Despite these repeated requests, Tzitzic Tareta never responded to section D. Absent the information required in section D, we were unable to determine whether home market sales were made at prices above the cost of production, nor could we assume that all home market sales were made at prices below the cost of production and base foreign market value on construction value. As a result, we did not verify Tzitzic Tareta's response to the sale questionnaire, and have based Tzitzic Tareta's margin on BIA.

Because Tzitzic Tareta failed to respond to our cost questionnaire, and was therefore considered uncooperative, we would normally assign to this company the rate calculated for Florex in this review, (*i.e.*, the highest margin calculated in this review for any company that supplied an adequate response, a margin which is higher than any calculated margin for Tzitzic Tareta in any previous review or the original investigation). However, given (1) the enormous disparity between the verified rate for Florex in this review and the verified rates for other companies in this review, prior reviews, and the original investigation (more than 200 percentage points), and (2) Florex's extraordinarily high business expenses resulting from investment activities during this review period which are uncharacteristic of the other companies subject to this review, we find it inappropriate to use Florex's rate as BIA in this review. Although Florex capitalized much of its unusually high costs in accordance with Mexican Generally Accepted Accounting Principles (MGAAP), it appears that there may still be significant residual effect on Florex's margin. Therefore, we are assigning to Tzitzic Tareta the next margin in the BIA hierarchy, which is Tzitzic Tareta's margin from the final results of the 1988–1989 administrative review.

Visaflor

As stated in the "Background" section of this notice, Visaflor refused to allow the Department to verify its response, and as such, significantly impeded this review. It would, thus, be our general practice to assign to this company the rate calculated for Florex in this review. However, for the reasons stated above for Tzitzic Tareta, we find it inappropriate to use Florex's rate as BIA in this review. Accordingly, we are assigning to Visaflor the next margin in the BIA hierarchy, which is Visaflor's margin from the final determination of the original investigation.

Rancho Mision el Descanso

At verification, we found a significant portion of Rancho Mision's response to be incomplete and/or inaccurate. Because Rancho Mision failed to provide sufficient documentation for most elements of its response, we were unable to establish its completeness. Most importantly, Rancho Mision failed to substantiate the total volume and value of exporter's sales price (ESP) sales. Not only could Rancho Mision not explain how it calculated the aggregate ESP sales totals reported in its Section A questionnaire response, but it also presented no documentation to demonstrate that the ESP sales it reported were complete.

In addition, we noted at verification that Rancho Mision failed to report commissions paid on consignment sales and imputed credit expenses for all sales. We also noted that Rancho Mision did not report freight, brokerage, packing or border charges incurred on ESP sales.

Furthermore, we were unable to establish the relationship between Rancho Mision and its U.S. "subsidiary" during the POR. Rancho Mision claims that at some time between 1988 and 1991 it sold its "subsidiary" but was unable to provide the verification team with any sales or legal documentation related to this alleged sale. Therefore, we were unable to determine the identity of the first unrelated U.S. purchaser in those cases.

Regarding inaccuracies found in the data reported by Rancho Mision, these include the following: Rancho Mision reported all pompom chrysanthemums as standard chrysanthemums and vice-versa; the percentages used to allocate freight, brokerage, packing and border charges to each flower type for U.S. consignment and direct sales were incorrectly calculated; it estimated indirect selling expenses for its U.S. subsidiary because it could not locate the expense ledgers for the last four months of the POR (however, in examing the estimated indirect selling expenses, we found that the actual expenses for the eight-month period for which it had expense ledgers exceeded the estimated expenses for the entire 12-month POR); and it included in its direct sales listing sales to its U.S. subsidiary, despite previous statements that it had not done so, and included sales of flowers purchased from U.S. producers in its ESP sales listing.

In addition, at verification we found that the sales prices and quantities for a number of the sales that it reported (both ESP and direct) were incorrect. Although it was given an opportunity subsequent to verification to submit a revised computer tape containing the corrected information, Rancho Mision claimed it was unable to do so.

Based on the totality of the problems that we found with Rancho Mision's reported information and the fact that it did not submit a corrected computer tape subsequent to verification, we have determined that it is appropriate to use BIA for the preliminary results. However, in determining what is appropriate to use as BIA, we have taken into consideration that Rancho Mision attempted to cooperate with the Department, in that it complied with all of the Department's requests for information (with the exception of the response to Section D of the questionnaire for one flower type which

accounted for a very small percentage of its total sales). Consequently, we are assigning to Rancho Mision its margin calculated in the final determination of the original investigation, in accordance with the hierarchy described above.

United States Price

As in the original fair value investigation and in all prior administrative reviews of this merchandise, we calculated monthly weighted-average United States prices in order to account for the perishability of the product.

Florex

We based United States price on both purchase price and ESP because sales were made to unrelated purchasers both before and subsequent to importation. The sales made subsequent to importation were made through an unrelated consignment agent in the United States.

When sales were made to an unrelated purchaser prior to importation, we calculated purchase price for Florex based on packed, f.o.b. Mexico City airport prices and f.o.b. farm prices. Since Florex did not incur charges in delivering the merchandise from its farm in Puebla to the Mexico City airport, no foreign inland freight was deducted. At verification, we discovered that Florex incurred brokerage charges in Mexico City that it did not report. As BIA, we allocated brokerage expenses found in Florex's expense ledger over the sum of the total quantity of merchandise shipped to the United States, less the quantity for the sale with terms f.o.b. farm, and the total quantity of sales that appear to have been shipped to Canada, and deducted this per stem amount for all purchase price sales with terms of sale f.o.b. Mexico City airport. In addition, we adjusted the prices of three purchase price sales based on information found at verification.

Where sales were made subsequent to importation, we calculated ESP based on f.o.b. Houston airport prices. At verification we found that Florex had not reported charges which were, in fact, incurred in delivering the merchandise from its farm in Puebla to the Mexico City airport. Therefore, as BIA, we allocated Florex's total freight costs taken from its expense ledger for the POR over the total quantity of subject merchandise sold in the home market and the total quantity of both subject and non-subject merchandise sold in the United States for all sales made f.o.b. Mexico City airport or f.o.b. Houston airport during the POR, and deducted this amount from U.S. price. As with purchase price sales, we deducted foreign brokerage charges that respondent did not report. We used BIA to estimate this charge (see paragraph above for a description of the calculation of this charge). We also made deductions for air freight, U.S. brokerage and handling and U.S. Customs user fees. We made no deductions for the reported U.S. antidumping duty deposits made in connection with these sales.

Florex reported gross revenue received over all merchandise shipped to the United States, regardless of whether that merchandise was sold. We adjusted the gross unit prices reported by Florex by allocating total revenue for each sale over only the quantity of merchandise actually sold.

In accordance with 19 CFR 353.41(e), we made further deductions to ESP for credit expenses and commissions. To calculate credit expenses for the first nine months of the POR, we used publicly-available monthly FOMEX interest rates provided by another respondent in this review. These interest rates were the rates in effect during the POR on loans made by the Mexican government to exporters. As the FOMEX program was discontinued at the end of 1989, we used U.S. short-term prime rates for the remaining three months of the POR.

Rancho el Aguaje

We based United States price on ESP, in accordance with section 772(c) of the Act, because all sales to the first unrelated purchaser took place after importation into the United States. These sales were made through unrelated consignment agents in the United States.

To calculate ESP, we used the packed, f.o.b. prices delivered to the consignment agent's offices in the United States. We adjusted ESP for errors and omissions found at verification. We then made deductions for inland freight, brokerage and handling, and U.S. Customs user fees. We adjusted the reported amounts as follows. Regarding inland freight, we reclassified highway tolls reported as part of general and administrative expenses (G&A) as inland freight. In addition, we adjusted the percentage used to allocate the reported inland freight expenses to subject merchandise by excluding sales made outside the period. Concerning brokerage and handling and U.S. Customs user fees, Rancho el Aguaje did not report expenses for certain months of the POR. At verification, however, we found that Rancho el Aguaje did, in fact, incur expenses for these months. As BIA for brokerage and handling, we calculated the expense for the entries during the month for which no expenses were reported based on the fee paid for each entry and the number of entries during the month. As BIA for U.S. Customs user fees, we calculated expenses for the month for which no expenses were reported based on the highest percentage of U.S. price reported for any of the other months during the POR.

In accordance with § 353.41(e) of the Department's regulations, we made further deductions to ESP for credit expenses and commissions. Concerning credit expenses, we increased the credit period reported for each consignment agent in order to account for the time between issuance of checks and their deposit into the account of the exporter. We calculated the additional time based on our observations at verification.

Rancho el Toro

We based United States price on ESP, in accordance with section 772(c) of the Act, because all sales to the first unrelated purchaser took place after importation into the United States. These sales were made through an unrelated consignment agent in the United States.

To calculate ESP, we used the packed, ex-warehouse prices at the consignment agent's warehouse in the United States. We adjusted ESP for errors and omissions found at verification. We then made deductions for inland freight, brokerage and handling, and U.S. Customs user fees. We adjusted the reported amounts as follows. Regarding inland freight, we reclassified certain expenses reported as part of G&A as inland freight. We also reclassified certain expenses reported as part of inland freight as G&A. Finally, we allocated the vehicle liability insurance reported for two months over the POR.

In accordance with 19 CFR 353.41(e), we made further deductions to ESP for credit expenses and commissions. Concerning credit expenses, we increased the reported credit period in order to account for the time between issuance of checks and their deposit into the account of the exporter. We calculated the additional time based on our observations at verification. Finally, we used the monthly FOMEX interest rates provided by respondent to calculate credit for the first nine months of the POR. As the FOMEX program was discontinued at the end of 1989, we used U.S. short-term prime rates for the remaining three months of the POR.

Foreign Market Value

Foreign market value (FMV) was based on constructed value (CV) for those companies with calculated margins.

Florex

We gathered and analyzed data on Florex's production costs for this review. Consistent with our past practice concerning perishable products, if less than 50 percent of respondent's sales were at prices below the COP, we did not disregard any below-cost sales because we determined that the below-cost sales were not made in substantial quantities over an extended period of time. If between 50 and 90 percent of respondent's sales were at prices below the COP, we disregarded only the below cost sales. In such cases, we determined that the respondent's below-cost sales were made in substantial quantities over an extended period of time. If more than 90 percent of a respondent's sales were at prices below the COP, we determined that there were an insufficient number of sales to serve as the basis for determining FMV. Instead, we used CV as the basis for determining FMV for these sales.

In order to determine whether home market sales were above the COP, we calculated the COP based on costs reported by Florex except as noted below. Specifically, we:

(1) Included in the total quantity of sales made by Florex over which COP was allocated, the quantity of sales made to Canada that were not reported by Florex in its questionnaire response;

(2) Based costs on the cultivated area only;

(3) Increased plant costs for differences noted at verification;

(4) Calculated plant costs based on the quantity produced to reflect the costs associated with plants lost during cultivation;

(5) Revised the cost of manufacturing to eliminate an adjustment which related to costs incurred outside the POR;

(6) Added the costs associated with the revaluation of assets as this was a normal accounting practice of Florex;

(7) Allocated 1989 G&A expenses based on cost of sales rather than as a percentage of cultivation;

(8) Increased G&A costs to include miscellaneous expenses and professional services; and

(9) Included the finance costs as reflected on the 1989 financial statements.

We found that more than 90 percent of Florex's sales of pompom chrysanthemums in Mexico were made at prices below the COP. Accordingly, we disregarded all sales as the basis for determining FMV. In accordance with section 733(e) of the Act, we calculated FMV based on CV. CV includes cost of materials, fabrication, general expenses, profit, and packing. In all cases we used:

(1) Actual general expenses, in accordance with section 773(e)(1) of the Act, since these exceeded the statutory minimum requirement of ten percent of the sum of materials and fabrication;

(2) The statutory eight percent minimum profit, in accordance with section 773(e)(1)(B)(ii) of the Act, because this exceeded actual profit; and

(3) Imputed credit, which was included in selling expenses. We did not reduce interest expense incurred during the period of review because the effect on CV would be insignificant.

The CV data submitted by Florex was relied on, except in the instances where costs were not appropriately quantified or valued. See the discussion of Florex's COP above.

Where U.S. price was based on ESP, we deducted from CV home market commissions paid to unrelated parties, in accordance with 19 CFR 353.56(a)(2). We also deducted home market credit expenses from CV.

Where U.S. price was based on purchase price, we made circumstance of sale adjustments, where appropriate, for differences in credit expenses and commissions. To calculate U.S. credit expenses for the first nine months of the POR, we used publicly-available monthly FOMEX interest rates provided by another respondent in this review. These interest rates were the rates in effect during the POR on loans made by the Mexican government to exporters. As the FOMEX program was discontinued at the end of 1989, we used public home market interest rates provided by another respondent for the last three months of the POR.

Rancho el Aguaje

Rancho el Aguaje did not have a home market or third country market for export quality grade flowers. Accordingly, we calculated FMV based on CV, in accordance with section 773(e)(1) of the Act. CV includes materials, fabrication, general expenses, profit, and packing. In all cases we used:

(1) Actual general expenses, in accordance with section 773(e)(1) of the Act, since these exceeded the statutory ten percent minimum of materials and fabrication;

(2) The statutory eight percent minimum profit, in accordance with section 773(e)(1)(B)(ii) of the Act, because Rancho el Aguaje did not have a home or third country market; and

(3) Imputed credit, which was included in selling expenses. We then reduced interest expense incurred during the period for the portion of the expense related to these imputed credit costs in order to avoid double counting.

Because Rancho el Aguaje did not have a home market or third country market, we included in CV general expenses and packing expenses based on reported U.S. experience.

The CV data submitted by Rancho el Aguaje was relied on, except in the following instances where costs were not appropriately quantified or valued. Specifically, we:

(1) Increased material, labor and overhead to reflect costs incurred but not reflected in the submission;

(2) Increased electricity costs to reflect the costs for the 12-month period of review rather than the six-month costs reported;

(3) Revised plant costs to reflect findings at verification;

(4) Increased G&A costs to reflect costs in the financial statements, but not included in the submission;

(5) Allocated G&A expenses based on cost of sales rather than cultivation area; and

(6) Used best information available to reflect finance costs which were not reported in the submission.

We deducted from CV commissions paid to unrelated parties and credit expenses, in accordance with 19 CFR 353.56(a)(2).

Rancho el Toro

Rancho el Toro did not have a home market or third country market for export quality grade flowers. Accordingly, we calculated FMV based on CV, in accordance with section 773(e)(1) of the Act. CV includes materials, fabrication, general expenses, profit, and packing. In all cases we used:

(1) Actual general expenses, in accordance with section 773(e)(1) of the Act, since these exceeded the statutory ten percent minimum of materials and fabrication;

(2) The statutory eight percent minimum profit, in accordance with section 773(e)(1)(B)(ii) of the Act, because Rancho el Toro did not have a home or third country market; and

(3) Imputed credit, which was included in selling expenses.

Because Rancho el Toro did not have a home market or third country market, we included in CV general expenses and packing expenses based on reported U.S. experience.

The CV data submitted by Rancho el Toro was relied on, except in the following instances where costs were

not appropriated quantified or valued. Specifically, we:

(1) Based costs on the cultivation area only;

(2) Based plant costs on the quantity of plants reported by company officials rather than the quantity reflected in the accounting records as BIA;

(3) Increased fertilizer costs for costs incurred but not reflected in the submission;

(4) Used BIA to reflect depreciation costs of assets noted in the plant tour, but not reflected in the accounting records;

(5) Reclassified certain G&A costs to labor expense as these costs related to hourly workers;

(6) Increased G&A costs to reflect C&A costs reflected in the financial statements but not included in the submission;

(7) Adjusted G&A expenses to account for expenses incorrectly reported as indirect selling expenses;

(8) Allocated G&A expenses based on cost of sales rather than cultivation area; and

(9) Corrected two clerical errors in the calculation of plant and labor costs.

We deducted from CV commissions paid to unrelated parties and credit expenses, in accordance with 19 CFR 353.56(a)(2).

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margins exist for the period April 1, 1989, through March 31, 1990:

Manufacturer/Exporter	Margin (Percent)
Florex	264.43
Rancho el Aguaje	0.57
Rancho el Toro	0.00
Rancho Mision el Descanso	24.33
Tzitzic Tareta	39.95
Visaflor	29.40

The Department will issue appraisement instructions concerning these companies directly to the Customs Service upon completion of this administrative review.

Furthermore, the following deposit requirements will be effective upon publication of our final results of this administrative review for all shipments of the subject merchandise from Mexico entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for any shipments of this merchandise produced or exported by any of the reviewed companies will be that established in the final results of this review; (2) if the exporter is not a firm covered in this review or any previous review, or the original investigation, but the producer is, the cash deposit rate will be that established for the producer of the merchandise in the final results of this review; (3) the cash deposit rate for all other producers/exporters shall be 0.57 percent.

Generally, it is our practice to assign the highest rate calculated for any responding firm in the current review to future entries of the subject merchandise from a new producer and/or exporter. However, given the enormous disparity between the verified rate for Florex in this review and the verified rates for other companies in this review, prior reviews, and the original investigation, and Florex's extraordinarily high business expenses resulting from investment activities during this review period which are uncharacteristic of the other companies subject to this review, we find it inappropriate to use Florex's rate as the cash deposit rate for producers and/or exporters not related to Florex. Accordingly, we are using the next highest verified rate calculated for a responding company.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administration review.

Public Comment

In accordance with 19 CFR 353.38, case briefs or any other written comments must be submitted in at least ten copies to the Assistant Secretary for Import Administration no later than May 24, 1991, and rebuttal briefs no later than 10 a.m. on May 31, 1991. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, such hearing will be held on May 31, 1991, at 3 p.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Persons interested in attending the hearing should ascertain with the Department the date and time of the hearing as the scheduled date approaches to ensure that circumstances have not required a change in plans.

Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, room B-099, at the above address within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), an interested party may make an affirmative oral presentation only on arguments included in its briefs.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(c)(5).

Dated: April 25, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-10433 Filed 5-1-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-351-505]

Malleable Cast Iron Pipe Fittings From Brazil, Intent To Revoke Antidumping Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping order on malleable cast iron pipe fittings from Brazil. Interested parties who object to this revocation must submit their comments in writing not later than May 31, 1991.

EFFECTIVE DATE: May 2, 1991.

FOR FURTHER INFORMATION CONTACT: John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On May 21, 1986, the Department of Commerce published an antidumping finding on malleable cast iron pipe fittings from Brazil (51 FR 18640). The Department of Commerce ("the Department") has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity to Object

Not later than May 31, 1991, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by May 31, 1991, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by May 31, 1991, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: April 24, 1991.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 91-10434 Filed 5-1-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-247-003]

Portland Cement, Other Than White, Nonstaining Portland Cement, From the Dominican Republic, Intent To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on Portland cement, other than white, nonstaining Portland cement, from the Dominican Republic. Interested parties who object to this revocation must submit their comments in writing not later than May 31, 1991.

EFFECTIVE DATE: May 2, 1991.

FOR FURTHER INFORMATION CONTACT: Edward Haley or Robert J. Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On May 4, 1963, the Department of Treasury published an antidumping finding on Portland cement, other than white, nonstaining Portland cement, from the Dominican Republic (28 FR 4507). The Department of Commerce ("the Department") has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this finding.

Opportunity to Object

Not later than May 31, 1991, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by May 31, 1991, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by May 31, 1991, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: April 26, 1991.

Roland L. MacDonald.

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 91-10435 Filed 5-1-91; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Determination: Certain Type 302 HQ Stainless Steel Wire Rod

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of short-supply determination on certain type 302 HQ stainless steel wire rod.

SHORT-SUPPLY REVIEW NUMBER: 47.

SUMMARY: The Secretary of Commerce ("Secretary") hereby denies a short-supply allowance for 700 metric tons of certain Type 302 HQ stainless steel wire rod for May—December 1991 under the U.S.-EC, U.S.-Brazil, U.S.-Korea, and U.S.-Japan steel arrangements.

EFFECTIVE DATE: April 26, 1991.

FOR FURTHER INFORMATION CONTACT: Mark Brechtl or Richard Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230 (202) 377-1386 or (202) 377-0159.

SUPPLEMENTARY INFORMATION: On March 28, 1991, the Secretary of Commerce ("Secretary") received an adequate petition from Techalloy, Inc. ("Techalloy") requesting short supply for 700 metric tons of certain Type 302 HQ stainless steel wire rod for May—December 1991 under article 8 of the U.S.-Brazil, U.S.-EC, U.S.-Korea steel arrangements, and paragraph 8 of the U.S.-Japan steel arrangement. Techalloy requested short supply for certain Type 302 HQ rod because it cannot obtain this material from potential domestic sources, and its possible foreign suppliers have insufficient available quota to provide this product. The Secretary conducted this short-supply review pursuant to section 4(b)(4)(A) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101-221, 103 Stat. 1886 (1989) ("the Act"), and § 357.102 of the Department of Commerce's Short-Supply Procedures. (19 CFR 357.102) ("Commerce's Short-Supply Procedures").

The requested product is stainless steel wire rod, Type 302 HQ (S30430) coil, A.O.D. quality, hot rolled, annealed and pickled, that meets the following specifications:

Diameters: 0.217 inch, 0.250 inch, 0.276 inch, 0.312 inch, 0.437 inch, 0.531 inch;

Chemical Composition:

C—0.03 maximum
Mn—2.00 maximum
Si—1.00 maximum
P—0.045 maximum
S—0.030 maximum
*Cr—17.5-19.0
*Ni—8.5-10.0
Cu—3.0-4.0
N—0.10 maximum
*Note difference from standard.

Application: Unless otherwise specified herein, or on the purchase order, the material shall be certified to the chemistry of ASTM-A-493 Type Xm-7 (latest revision);

Mechanical Properties: The as-shipped tensile strength shall not exceed 72,000 P.S.I.;

Surface: Uniform in quality and condition; surface defects such as seams, laps, cracks, gouges, pits, and other imperfections detrimental to the production of cold-heading quality wire shall not exceed one percent of the diameter;

Quality: The material shall be internally clean and free of foreign materials, excessive inclusions, piping and other imperfections detrimental to the production of high-quality wire products.

On March 29, 1991, the Secretary established an official record on this short-supply request (Case Number 47) in the Central Records Unit, room B–099, Import Administration, U.S. Department of Commerce at the above address. On April 9, 1991, the Secretary published a notice in the **Federal Register** announcing a review of this request and soliciting comments from interested parties. Comments were required to be received no later than April 16, 1991, and interested parties were invited to file replies to any comments no later than five days after that date. In order to determine whether this product could be supplied by U.S. producers in May—December 1991, the Secretary sent questionnaires to AL Tech Specialty Steel Corporation ("AL Tech"), Baltimore Specialty Steels Corporation ("BSSC"), and Carpenter Technology Corporation ("CarTech"). The Secretary received timely questionnaire responses from AL Tech and BSSC, and Talley Metals Technology, Inc. ("Talley") responded to the notice in the **Federal Register.**

Questionnaire Responses: AL Tech indicated in its questionnaire response that it is currently supplying Techalloy with this grade of stainless wire rod, and that it's product meets Techalloy's specifications with the exception of the maximum tensile strength. Nevertheless, AL Tech notes that Techalloy continues to purchase this material from AL Tech, suggesting that Techalloy allows some flexibility in this specification, and material exceeding this specification is acceptable. AL Tech states that it can supply 40 net tons per month, or 280 net tons (256 metric tons) for June-December 1991. AL Tech has no limitations on the sizes it can supply. Talley responded to the **Federal Register** notice by stating that it is capable and willing to supply the total quantity of this type of wire rod in all rod sizes 0.385 inch and below. BSSC stated in its response that it cannot meet the specifications required by Techalloy.

Analysis: The major issue in this short-supply review is whether there is a shortage of supply for the requested sizes of the subject product. Techalloy requested short supply for 700 metric tons of this product but gave no breakdown of the quantity sought in each of the six sizes.

Regarding the four smallest sizes of rod (0.217 inch, 0.250 inch, 0.276 inch, and 0.312 inch), Talley and AL Tech can produce the requested product. Talley indicates that it is fully capable of meeting all of Techalloy's quantity needs for these sizes, which are believed to be the major sizes consumed. AL Tech is also capable of producing these four sizes but only can supply up to 256 of the 700 metric tons sought for all six sizes. Hence, there is no shortage of supply in these four sizes as there are two potential suppliers for this material.

Regarding the two largest sizes (0.437 inch and 0.531 inch), AL Tech is the only potential supplier. However, AL Tech again is limited on the total quantity of Type 302 HQ rod it can supply. Although AL Tech can supply only 256 metric tons for all six sizes included in this review, Techalloy provided no information indicating AL Tech has refused to accept purchase orders from Techalloy for any material in these two larger sizes, suggesting that a condition of short supply also does not exist for these two sizes.

Conclusion: Because both AL Tech and Talley have expressed a willingness and ability to supply the requested product, and Techalloy has provided no evidence to the contrary that the product these companies produce is not acceptable or cannot meet Techalloy's quantity requirements, both AL Tech and Talley must be regarded as adequate suppliers. Therefore, the Secretary denies, pursuant to section 4(b)(4)(A) of the Act and § 357.102 of Commerce's Short-Supply Procedures, the short-supply request for 700 metric tons of the requested Type 302 HQ stainless steel wire rod for May-December 1991 under the U.S.-EC, U.S.-Brazil, U.S.-Korea, and U.S.-Japan steel arrangements. However, if the Secretary determines that his decision in this review was based on inaccurate information submitted by a private party, the Secretary may reconsider his decision.

Dated: April 26, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–10436 Filed 5–1–91; 8:45 am]

BILLING CODE 3510–DS–M

National Technical Information Service

Prospective Grant of Exclusive Patent License

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), United States Department of Commerce, is contemplating the grant of an exclusive license in the United States and certain foreign countries to practice the invention embodied in United States Patent Application Serial Number 7–602,491 for "Scrap Treatment Method" to Ames Specialty Metals, Inc. having a place of business at 2625 North Loop Drive, Ames, Iowa. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The invention discloses a method of treating rare earth-transition metal alloy scrap. In one embodiment of the invention the scrap is dissolved in an aqueous sulfuric acid solution, the solution is reacted with a hydroxide of an alkali element (e.g., Na or K) or ammonium to precipitate a double sulfate salt of the rate earth and the alkali element or ammonium, and the salt is separated from the solution. The double sulfate salt is converted to a rare earth salt, such as rare earth fluoride, amenable for use in metallothermic reduction processes to produce rare earth metal or alloys.

The availability of the invention for licensing was published on Wednesday, April 3, 1991 in the **Federal Register** Vol. 56, No. 64, P. 13,629. A copy of the patent application may be purchased from the NTIS Sales Desk by telephoning 800–553–NTIS, 703–487–4650 in Virginia, or by writing to Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Charles A. Bevelacqua, Center for Utilization of Federal Technology, NTIS, Box 1423, Springfield, VA 22151. Properly filed competing applications received by NTIS in response to this notice will be considered as objections to the grant of the contemplated license.

Douglas J. Campion,

Patent Licensing Specialist Center for Utilization of Federal Technology.

[FR Doc. 91–10324 Filed 5–1–91; 8:45 am]

BILLING CODE 3510–04–M

Prospective Grant of Exclusive Patent License

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent Application Serial Number 7/432,044, "cDNA and Protein Sequences of Human Bone Matrix Proteins" to Matrix Biosystems, Inc., having a place of business at 3181 Porter Drive, Palo Alto, California 94304. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The invention covers certain bone and connective tissue disease processes detectable by *in vitro* and *in vivo* monitoring of the level of certain marcromolecules. It describes the cDNA and amino acid sequences of macromolecules that account for the majority (70% of the noncollagenous proteins in the human skeleton) of macromolecules that are truly of bone cell origin. The invention includes diagnostics methods to detect these genes and gene products. A shift in their levels from the normal values would be indicative of skeletal and/or connective tissue disease states. The application also describes methods of therapeutic intervention, including the use of monoclonal antibodies, gene amplification or anti-sense DNA.

The availability of the invention for licensing was published in the **Federal Register** Vol. 55, No. 64, p. 12400 (1990). A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephoning 1–800–553–NTIS or by writing to Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Girish C. Barua, Center for Utilization of Federal Technology, NTIS, Box 1423, Springfield, VA 22151. Properly filed competing applications received by the NTIS in response to this notice will be considered as objections to the grant of the contemplated license.

Douglas J. Campion,

Patent Licensing Specialist, Center for Utilization of Federal Technology, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 91–10388 Filed 5–1–91; 8:45 am]

BILLING CODE 3510-04-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Proposed Health Insurance Futures and Futures Options Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures and futures option contracts.

SUMMARY: The Chicago Board of Trade (CBT or Exchange) has applied for designation as a contract market in health insurance futures and as a contract market in health insurance futures options. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation § 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before June 3, 1991.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the CBT health insurance futures contract or health insurance option contract.

FOR FURTHER INFORMATION CONTACT: Please contact Stephen Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, at (202) 254–7303.

SUPPLEMENTARY INFORMATION: In addition to requesting comment on the terms and conditions of the proposed futures and futures option contracts, the Division also is requesting comment on the merits of a petition filed by the CBT pursuant to § 33.11 of the Commission's option rules. The petition requests exemptive relief from the trading volume tests for options on futures as set forth in Commission Rule 33.4(a)(5)(iii).

Copies of the terms and conditions of the proposed contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CBT in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or argument on the terms and conditions of the proposed contracts, or with respect to other materials submitted by the CBT in support of the applications, should send comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC., 20581, by the specified date.

Issued in Washington, DC on April 26, 1991.

Gerald Gay,

Director.

[FR Doc. 91–10352 Filed 5–1–91; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Base Closure and Realignment Commission; Public Hearing

ACTION: Announcement of public hearings of the Defense Base Closure and Realignment Commission.

SUMMARY: Open public meetings of the Defense Base Closure and Realignment Commission will be held in Washington, DC in accordance with the following dates and times, with specific meeting locations to be determined and published in the **Federal Register**: Friday, May 10, 9:30 a.m., hearings on land value and the environmental and economic impacts associated with the

proposed base closures/realignments; Friday, May 17, 9:30 a.m., hearings on the General Accounting Office assessment of the DoD process for determining candidate bases for closure/realignments; Tuesday/Wednesday, May 21–22, 9:30 a.m., Congressional testimony from federal representatives of communities potentially affected by closures/realignments; Thursday/Friday, June 6–7, 9:30 a.m., Commission deliberation hearings on closure realignment candidates; Thursday/Friday, June 13–14, 9:30 a.m, Commission deliberation hearings on closure/realignment candidates; Thursday/Friday, June 20–21, 9:30 a.m., Commission deliberation hearings on closure/realignment candidates.

As previously published in the Federal Register, regional hearings outside the Washington, DC area will be held in accordance with the following schedule:

San Francisco, California: The first regional hearing will be on Monday and Tuesday, May 6th and 7th, 1991, at the California Palace of the Legion of Honor Florence Gould Theatre, Lincoln Park, 34th & Clement Streets, San Francisco, CA from 9:30 to 4:30 p.m. Testimony is invited on the following facilities: Sacramento Army Depot, CA; Fort Ord, CA; Castle AFB, CA; Hunters Point Annex, CA: Moffett Field Naval Air Station, CA: Naval Electronic Systems Engineering Center, Vallejo, CA; Whidby Island Naval Air Station, WA; Sand Point (Puget Sound) Naval Station, WA; and Naval Undersea Warfare Engineering Station, WA.

Los Angeles, California: The second regional hearing will be held on May 8, 1991 at the Los Angeles Museum of Science and Industry at Harbour Freeway and Exposition Blvd., Exposition Park, Los Angeles. Testimony is invited on the following facilities: Naval Weapons Center, China Lake, CA; Pacific Missile Test Center Pt., Mugu, CA; Long Beach Naval Station, CA; Marine Corps Air Station, Tustin, CA; Integrated Combat Systems Test Facility, San Diego, CA; Naval Electronic System Engineering Center, San Diego, CA; Naval Space Systems Activity, Los Angeles, CA; and Naval Ocean System Center Detachment, Kaneohe, Hawaii.

Denver, Colorado: The third regional hearing will be on Monday, May 13, 1991 in Denver, Colorado at the Denver Auditorium, 131 Champa Street (3rd floor auditorium), beginning at 9:30 a.m. Testimony is invited on facilities in the following states: Colorado, Arizona, Idaho, New Mexico, and Missouri.

Fort Worth, Texas: The fourth regional hearing will be on Tuesday, May 14, 1991 in Forth Worth, Texas, at a time and place to be determined and published in the Federal Register. Testimony is invited on facilities in the following states: Texas, Louisiana, and Arkansas.

Jacksonville, Florida: The fifth regional hearing will be on Thursday, May 23, 1991, in Jacksonville, Florida at a time and place to be determined and published in the Federal Register. Testimony is invited on facilities in the following states: Florida, Georgia, Alabama, and South Carolina.

Philadelphia, Pennsylvania: The sixth regional hearing will be on Friday, May 24, 1991, in Philadelphia, Pennsylvania, at a time and place to be determined and published in the Federal Register. Testimony is invited on facilities in the following states: Pennsylvania, New Jersey, and Maryland.

Boston, Massachusetts: The seventh regional hearing will be on Tuesday, May 28, 1991, in Boston, Massachusetts, at a time and place to be determined and published in the Federal Register. Testimony is invited on facilities in the following states: Massachusetts, Maine, Rhode Island, and Connecticut.

Indianapolis, Indiana: The eighth regional hearing will be held on Thursday, May 30, 1991, in Idianapolis, Indiana, at a time and place to be determined and published in the Federal Register. Testimony is invited on facilities in the following states: Indiana, Michigan, Illinois, Ohio, and Kentucky.

Washington, DC: Hearings will be held in Washington, DC on Tuesday and Wednesday, May 21st and 22nd at a time and place to be determined and published in the Federal Register. Testimony is invited on facilities in the following states: Virginia, and the District of Columbia.

The Commission will consider all written testimony during its deliberations. All interested individuals and groups are invited to submit their testimony or comments in writing to: Defense Base Closure Commission, 1625 "K" Street, NW., suite 400, Washington, DC 20006. In order to ensure all written comments may be considered, please submit them so as to arrive at the Commission offices by May 30, 1991.

In some instances, less than 15 days notice is being given due to difficulties in confirming appropriate locations in San Francisco and Los Angeles to accommodate large public hearings.

FOR FURTHER INFORMATION: Defense Base Closure and Realignment Commission, Mr. Cary Walker, Director of Communications and Public Affairs, 202–653–0823.

Dated: April 29, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–10369 Filed 5–1–91; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Notice of Intent; Draft Environmental Impact Statement for the Operation of the Multipurpose Range Complex, Pohakuloa Training Area, Hawaii

AGENCY: Department of Defense, Department of the Army, U.S. Army Pacific, U.S. Army Support Command.

ACTION: Notice of intent to prepare a draft environmental impact statment (DEIS) for the operation of the Multipurpose Range Complex, Pohakuloa Training Area, Hawaii.

SUMMARY: Pursuant to section 102(2)[C] of the National Environmental Policy Act of 1969, the U.S. Army will prepare a DEIS to assess the effects of operating the Multipurpose Range Complex (MPRC) at Pohakuloa Training Area (PTA), HI. The MPRC, located in the southwest corner of PTA, is an automated range designed for battalion-sized firing exercise using a variety of weapons. Construction of the range began in 1988 and is now over 95 percent completed.

Alternatives

The alternatives to be considered will be developed during the EIS scoping process, but will include a No-use alternative. The action alternatives are expected to include a range of intensities of use developed in relation to the various environmental constraints of the area. The alternatives will be developed considering operational factors such as different combinations of military equipment, weapons and types of ammunition, and spatial distribution and seasonal frequency of training.

Need for EIS

The Army decided to prepare an EIS because information indicated that operation of the MPRC could impact Category 1 and 2 candidate endangered plant species now believed to be present in the MPRC area. Category 1 species are expected to be proposed for listing as an Endangered Species by the U.S. Fish and Wildlife Service within the next two years. In addition to plant species and ecosystems, the following resources or impacts will be examined: animal species including birds and selected invertebrates, archaeological sites, and possible light pollution

relative to the Mauna Kea Observatory Complex. Environmental issues such as air quality, water quality, toxic and hazardous wastes, adequacy of utilities, and general socioeconomic concerns are not presently believed to be of potential significance, but will be examined during the EIS scoping process.

Scoping Process

Scoping of the EIS will help the Army identify what resources and impacts may need to be examined and identify a range of management options to consider in developing the alternatives. Information will be obtained through the Areawide and State Clearinghouse; local advertisement of the NOI; and through various telephone conversations, meetings and correspondence with government agencies and private organizations and individuals. Public workshops will be held on Hawaii and Oahu Islands. These workshops will be held approximately 30 days after publication of this notice in the Hawaii Office of Environmental Quality Control Bulletin. Specific meeting times and places will be publicized in local newspapers and other forums. All interested government agencies, quasi-government planning advisory committees, and private organizations and individuals are strongly encouraged to participate in the scoping process and provide written comments.

Coordination

Formal coordination will be undertaken with the following entities, among others: the Advisory Council on Historic Preservation, the U.S. Department of Agriculture's Denver Wildlife Research Center (Hawaii Field Station), the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service (Honolulu Office and Hawaii Field Research Station), and other Federal agencies; Oahu and Hawaii offices of the State of Hawaii Legislature, Departments of Health, Land and Natural Resources (including the Historic Preservation Office), and Transportation, and Offices of State Planning, Hawaiian Affairs, and Environmental Quality Control, and the University of Hawaii at Hilo and University of Hawaii at Manoa; the County of Hawaii Mayor's Office, County Council, Fire Department, Planning Department, Public Works Department and Water Supply Department; and other organizations such as the Audubon Society, Conservation Council for Hawaii, Sierra Club, hunting associations, and the adjoining land owners.

The Draft EIS is expected to be available for public review in the Summer of 1992.

ADDRESSES: For additional information, contact Mr. David G. Sox, Installation Support Section, Military Branch, U.S. Army Engineer District, Honolulu, building 230, Fort Shafter, Hawaii 96858–5440, Tele: (808) 438–5030.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I,L&E).

[FR Doc. 91–10380 Filed 5–1–91; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers; Department of the Army

Coastal Engineering Research Board, Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Coastal Engineering Research Board (CERB).

Date of Meeting: June 4–6, 1991.

Place: Holiday Inn Crowne Plaza, New Orleans, Louisiana.

Time: 8:15 a.m. to 5 p.m. on June 4; 8 a.m. to 3 p.m. on June 5; 9 a.m. to 11 a.m. on June 6.

Theme: Coastal Flood Protection.

Proposed Agenda: The morning session on June 4 will consist of a review of CERB business; presentations including Update of Dredging Research Program (DRP); DRP Monitoring of Dredged Material Plumes; Plume Monitoring Experience for Miami Harbor Project; Technical Issues in Plume Monitoring; Wetlands Research Program Overview/Coastal Initiative; and an Oil Spill Update.

The afternoon of June 4 will be devoted to a panel discussion on Coastal Flooding/Erosion—Gulf Coast Perspective and Initiatives. Presentations include Gulf of Mexico Program—Coastal Erosion Subcommittee—Coastal Erosion Gulfwide; Coastal Erosion and Wetland Loss in Louisiana—Status of U.S. Geological Survey Research Activities; Non-Fuel Mineral Resources in the EEZ Gulf of Mexico Task Force Activities; Coastal Erosion in Louisiana—Status of Louisiana Geological Survey Research Activities; Erosion, Flooding and Planning in the Coastal Parishes of Louisiana; Coastal Erosion in Texas; Corps O&M Activities and Programs to Reduce Coastal Erosion; and Corps Studies Under Way that Address Coastal and Shoreline Erosion.

The session on June 5 will consist of the Chief's Charge to the Board and two panels with several presentations addressing a specific topic for each panel. The first topic to be addressed is "Waves and Storm Surge due to Hurricanes." Presentations include Corps Uses of Hurricane Information; Lower Mississippi Valley Division Experience; Corps of Engineers Procedures and State of the Art in Modeling Hurricane Effects (Wind Prediction, Storm Surge Water Levels, Wave Predictions, Beach Modification); and Summary of Capabilities and Research Requirements. The second topic to be addressed is "Coastal Flooding Emergencies." Presentations include Corps Authority/Role in Disaster Response; FEMA Authority/Role in Disaster Response; R&D Needs Identified from Hurricane Hugo and other Disasters; Ongoing R&D Efforts; and Potential R&D Needs.

On June 6 the Board will report on their recommendations and response to the Chief's Charge.

This meeting is open to the public; participation by the public is scheduled for 9:15 a.m. on June 6.

The entire meeting is open to the public subject to the following:

1. Since seating capacity of the meeting room is limited, advance notice of intent to attend, although not required, is requested in order to assure adequate arrangements for those wishing to attend.

2. Oral participation by public attendees is encouraged during the time scheduled on the agenda; written statements may be submitted prior to the meeting or up to 30 days after the meeting.

Inquiries and notice of intent to attend the meeting may be addressed to Colonel Larry B. Fulton, Executive Secretary, Coastal Engineering Research Board, U.S. Army Engineer Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, Mississippi 39180–6199.

Larry B. Fulton,

Colonel, Corps of Engineers Executive Secretary.

[FR Doc. 91–10398 Filed 5–1–91; 8:45am]

BILLING CODE 3710–GX–M

DELAWARE RIVER BASIN COMMISSION

Amendment of Project Review Filing Fee Schedule

AGENCY: Delaware River Basin Commission.

ACTION: Final rule.

SUMMARY: At its April 24, 1991 business meeting the Delaware River Basin Commission amended its schedule of project review filing fees for review of water resources projects. On June 28, 1972, the Commission adopted a resultion requiring that a filing fee be paid to the Commission at the time of filing applications pursuant to section 3.8 of the Delaware River Basin Compact. On April 23, 1975, the Commission amended the filing fee regulation by increasing the level of filing fees in recognition of the fact that revenues obtained from the filing fees since 1972 amounted to considerably less than the cost of administering the Commission's project review program.

The Commission once again proposed amendments to its filing fee schedule in 1990 to make the project review program more self-sustaining and held a public hearing on the proposal on December 12, 1990. Based on testimony received, the Commission revised its latest proposal and scheduled on April 24, 1991 public hearing to receive comments from the public. The amendments adopted following the April 24, 1991 hearing continue the long-standing exemption from filing fees for government agencies; establish a minimum fee of $250 for any project requiring Commission action and increase by 50% fees for projects which would result in an out-of basin diversion. All other aspects of the proposal which was the subject of the December 12, 1990 public hearing were adopted as proposed with the exception of the effective date, which is now May 1, 1991.

EFFECTIVE DATE: May 1, 1991.

ADDRESSES: Copies of the Commission's schedule of project review filing fees are available from the Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, Delaware River Basin Commission: Telephone (609) 883–9500.

SUPPLEMENTARY INFORMATION: The Commission held a public hearing on these amendments on April 24, 1991 as noticed in the March 14, 1991 and April 17, 1991 issues of the Federal Register (56 FR 10862 and 56 FR 15604).

The Commission's Project Review Filing Fee Schedule is amended as follows:

1. A filing fee shall be paid to the Commission, according to the schedule herein, at the time of filing each application for project review, pursuant to section 3.8 and Article 10 of the Delaware River Basin Compact. Government agencies shall be exempt from such filing fees.

2. The project review filing fee is the greater of (a) or (b) as follows, and (c), if and as applicable:

(a) Minimum fee: $250 for any project that requires Commission action;

(b) Alternative fee:

(1) 1/10 of 1% of project cost to $10,000,000;

(2) 1/25 of 1% of remaining cost above $10,000,000 but not to exceed a maximum fee of $50,000 as to any one project.

(c) For any project that results in an out-of-basin diversion, the fee as described above is increased by 50%.

3. The project cost shall include the estimated costs of design, supervision of construction, legal services, contract administration, land, materials, equipment, construction and fabrication.

4. Revenues received pursuant to this regulation shall go into the Commission's general fund and be subject to specific appropriation by the Commission.

5. Each substantial project revision or modification following Commission action requires an additional filing fee.

6. These amendments become effective May 1, 1991.

Authority: Delaware River Basin Compact, 75 Stat. 688.

Dated: April 25, 1991.

Susan M. Weisman,

Secretary.

[FR Doc. 91–10387 Filed 5–1–91; 8:45 am]

BILLING CODE 6360–01–M

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.117G and 84.215A]

Research and Development Centers Program and Fund for Innovation in Education: Innovation in Education Program

ACTION: Notice of cancellation of competitions.

The Secretary published a notice in the Federal Register on March 11, 1991 (56 FR 10946), inviting applications for a new award for fiscal year 1991 for operation of a center under the Research and Development Centers Program to conduct research on dissemination and knowledge utilization. On March 19, 1991, the Secretary published a notice in the Federal Register (56 FR 11549) inviting applications under the Fund for Innovation in Education: Innovation in Education Program for new awards for fiscal year 1991. Those notices are hereby withdrawn, and the competitions are hereby canceled.

On April 18, 1991, the President announced AMERICA 2000: An Education Strategy, a bold, complex, and comprehensive strategy to move America toward the National Education Goals. The Secretary plans to redirect funds under these programs in order to implement the strategy, which is to (1) create better and more accountable schools for today's students; (2) help invent a new generation of American schools for tomorrow's students; (3) transform America's adults into a nation of students; and (4) help make communities places where learning can happen. High priority research, development, dissemination, and training activities will be funded to support the strategy.

FOR FURTHER INFORMATION CONTACT: Regarding the Research and Development Centers Program: Milton Goldberg, U.S. Department of Education, 555 New Jersey Avenue, NW., room 610, Washington, DC 20208–5573. Telephone (202) 219–2079. Regarding the Fund for Innovation in Education: Margo Anderson, U.S. Department of Education, 555 New Jersey Avenue, NW., room 522, Washington, DC 20208–5524. Telephone (202) 219–1496. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8399 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Dated: April 29,1991.

Bruno V. Manno,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 91–10462 Filed 5–1–91; 8:45 am]

BILLING CODE 4000–01–M

Advisory Council on Education Statistics; Meeting

AGENCY: Advisory Council on Education Statistics, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Education Statistics. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE AND TIME: June 13, 1991, 9 a.m.–4:30 p.m. and June 14, 1991, 9 a.m.–Noon.

ADDRESSES: 555 New Jersey Avenue, NW., room 326, Washington, DC 20208.

FOR FURTHER INFORMATION CONTACT: Suellen Mauchamer, Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue, room 400B, Washington, DC 20208–7575, telephone: (202) 219–1839.

SUPPLEMENTARY INFORMATION: The Advisory Council on Education Statistics (ACES) is established under section 406(c)(1) of the Education Amendments of 1974, Public Law 93–380. The Council is established to review general policies for the operation of the National Center for Education Statistics (NCES) in the Office of Educational Research and Improvement and is responsible for advising on standards to insure that statistics and analyses disseminated by NCES are of high

quality and are not subject to political influence. The meeting of the Council is open to the public.

The proposed agenda includes the following:

- Release of Data from NAEP Trail State Assessment.
- Progress Toward Reaching the NCES Vision.
- Education Indicators and Implications of the National Education Goals Panel.
- Data Confidentiality and CD-ROM Applications.
- Work in Progress: Statistical Standards.
- Council Business.

Records are kept of all Council proceedings and are available for public inspection at the Office of the Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue NW., room 400B, Washington, DC 20208-7575.

Bruno V. Manno,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 91-10311 Filed 5-1-91; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent to Award a Grant to the American Petroleum Institute Production Department

AGENCY: Metarie Site Office, U.S. Department of Energy.

ACTION: Notice of Non-Competitive Financial Assistance (grant) Award with American Petroleum Institute (API) Production Department.

SUMMARY: The Department of Energy (DOE), Metarie Site Office announces that pursuant to 10 CFR 600.7(b)(2)(i) criteria (B), it intends to make a Non-Competitive Financial Assistance (Grant) Award through the Pittsburgh Energy Technology Center to API for a series of workshops entitled "Developing Area Specific Waste Management Plans for Oil and Gas Exploration and Production Operations."

SCOPE: The objective of the grant project is to cofund up to 40 workshops entitled "How to develop Area Specific Exploration and Production Waste Management Plans" throughout the United States. The primary objective of these workshops is to train and motivate applicable independent and major oil and gas operating company personnel to develop and use an area-specific waste Management Plan for exploration and production operations. The workshops provide practical training focusing on the methodology for developing area specific waste management plans. They emphasize wastes generated in onshore oil and gas production lease operations, onsite drilling and servicing operations for offshore waste management plans.

In accordance with 10 CFR 600.7(b)(2)(i) criteria (B), a noncompetitive Financial Assistance Award to API hss been justified.

This effort would be conducted by the API using their own resources; however, DOE support of the activity would enhance public benefits to be derived by making these workshops available to a wider audience than would otherwise be able to afford to atttend. DOE knows of no other entity which is conducting or planning to conduct such an effort. This effort is considered suitable for noncompetitive financial assistance and would not be eligible for financial assistance under a solicitation, and a competitive solicitation would be inappropriate.

The grant is for an estimated total value of $400,000. The DOE share of cofunding for the workshops is estimated at $100,000 and shall be used to pay for the reasonable and allowable costs pursuant to OMB Circular A-122 is as necessary for the workshops.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. box 10940, MS 921-118, Pittsburgh, PA 15236-0940, Attn: Rhonda L. Dupress, Telephone: AC (412) 892-4949.

Carroll Lambton,

Deputy Director, Acquisition and Assistance Division, Pittsburgh Energy Technology Center.

[FR Doc. 91-10427 Filed 5-1-91; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Form EIA-846A/C, "Manufacturing Energy Consumption Survey"

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Notice of the proposed revision of forms EIA-846A/C, "Manufacturing Energy Consumption Survey," and solicitation of comments.

SUMMARY: The Energy Information Administration (EIA), as part of its continuing effort to reduce paperwork and respondent burden (required by the Paperwork Reduction Act of 1980, Pub. L. No. 96-511, 44 U.S.C. 3501 et seq.), conducts a presurvey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, EIA is soliciting comments concerning the proposed revision to forms EIA-846A/C, "Manufacturing Energy Consumption Survey."

DATES: Written comments must be submitted on or before June 3, 1991. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below of your intention to do so as soon as possible.

ADDRESSES: Send comments to Mr. John L. Preston, Energy End Use Division, Energy Information Administration, Mail Stop 2F-049, Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Preston's telephone number is (202) 586-1128, FAX number (202) 586-9753.

FOR FURTHER INFORMATION OR TO OBTAIN COPIES OF THE PROPOSED FORMS AND INSTRUCTIONS: Requests for additional information or copies of the forms and instructions should be directed to John L. Preston at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background

II. Request for Comments

I. Background

Comments on the 1988 MECS were solicited in an August 2, 1988 **Federal Register** notice (53 FR 148). That version of the MECS was modified on the basis of those comments. The proposed 1991 MECS design utilizes experience gained from the administration and processing of the two previous surveys and consultations with respondents, trade association representatives, and data users.

II. Current Actions

In response to needs for additional data that were identified in the preparation of the National Energy Strategy (NES), and through feedback from the users of past MECS reports and data files, EIA proposes to make the changes described below to the 1988 MECS survey forms for use in 1991. These changes are being made to better serve the needs of data users, streamline the administration and processing of the survey, and reduce respondent burden where possible. The sample size for the 1991 MECS has been increased above that required for the 1988 MECS to permit more extensive coverage of high energy consuming industries

(approximately 29 additional four digit Standard Industrial Classification codes) and industry groups (approximately two three digit Standard Industrial Classification codes), as well as to improve the reliability of estimates.

For the 1991 MECS, each of the three survey forms will contain five sections: Section I, Non-Combustible Energy Sources; Section II, Combustible Energy Sources; Section III, Fuel Switching Capability; Section IV, Estimated Percent Consumption by End Use; and Section V, Energy Technology/Program Checklist. Sections IV and V were not part of the 1988 survey questionnaire.

As in the 1988 survey, separate forms will be used to meet the special needs of three major groups of manufacturers. EIA–846A will be sent to the majority of the manufacturing establishments; EIA–846B will be sent to establishments in SIC 2911 (Petroleum Refining); and EIA–846C will be sent to all other establishments in SIC 29 (Petroleum Refining and Related Industries), as well as establishments in SIC 24 (Lumber and Wood Products), SIC 26 (Paper and Allied Products), SIC 28 (Chemicals and Allied Products), and SIC 3312 (Blast Furnaces and Steel Mills). EIA–846A is the most general form and collects the basic consumption and fuel-switching data. EIA–846B minimizes burden for the refining industry by taking advantage of data already collected by other EIA surveys. Finally, EIA–846C is very similar to EIA–846A except that it contains an additional column on energy source shipments.

Specific changes in data items from the 1988 MECS are discussed section by section below.

Section I (Noncombustible Energy Sources). This section will not differ among the three forms. The noncombustible energy sources (electricity, steam, and industrial hot water) will remain as the column headings with desired quantities forming the rows of the table. Knowledge gained from the 1988 survey has permitted the consolidation of several questions on the 1991 forms. These include merging purchased quantities from utilities and nonutilities into a single question, merging expenditures for utility purchases and nonutility purchases into a single question, and merging sales or transfers offsite to utility or nonutility purchasers into a single question. Additional questions not on the 1988 forms include:

1. Total quantities of steam and hot water received onsite. This quantity was obtained on the 1988 form for electricity only.

2. Quantity of steam generated by cogeneration and by other sources of onsite production. For purposes of the MECS, the definition of cogeneration includes both top-cycling and bottom-cycling generation.

3. Total onsite generation of electricity and steam. This represents a summation of three previously answered questions.

4. Total sales and transfers offsite of steam and hot water. The 1988 quantities omitted sales and transfers of steam and hot water to utilities.

5. Total quantity of onsite consumption of electricity and steam. This is determined by adding total quantities received to total onsite generation minus total sales and transfers offsite. This quantity is required for completion of section IV—Percent Consumption by End Use.

Proposed to be dropped fom the 1991 MECS Section I is the requirement that establishments which received transfers of noncombustible energy sources from outside establishments indicate the name, address and telephone number of the supplier. This would result in the removal of the 1988 EIA–846D form from the MECS.

Section II (Combustible Energy Sources). Each version of the MECS form will be revised to contain those combustible energy sources most commonly used by respondents to that version. On all forms, certain energy sources (e.g., liquid petroleum gas, distillate fuel oil and petroleum coke) will be partially separated into their individual components. This revision responds to data user requests, and eliminates potential duplication of purchased, produced onsite and shipped offsite energy sources. A new column has been added to the EIA–846A and EIA–846C forms which identifies storage capacity for specified liquid sources. This will replace a three-part question on the 1988 form and provide more detail than that obtained for the three energy sources identified on the 1988 forms.

Form EIA–846C will contain a new column for the quantity of specified energy sources shipped offsite. The 1988 EIA–864C required respondents to identify and convert physical quantities of energy sources shipped offsite to Btu equivalents for a single total. The 1991 version will identify the specific energy sources of interest and will allow reporting in physical quantities.

Section III (Fuel Switching). This section will no longer require respondents to indicate the lead time to switch fuels. To reduce respondent burden, the single time constraint to fuel switching capability will be 30 days.

Section IV (Estimated Percent Consumption by End Use). The purpose of this section is to acquire information on how energy is used within an establishment. This section is being added to each version of the questionnaire in response to data user requests and the requirements of the NES. As with Section III (Fuel Switching), only "best guess" estimates, rather than actual data, are required. This question was developed only after the completion of extensive consultations with representatives of several manufacturing industries through a series of Industrial Roundtables held by the EIA. One of the purposes of those Roundtables was to determine how EIA could acquire usable end-use energy consumption data for manufacturing industries while keeping respondent burden to a minimum. The Roundtable participants informed EIA that, even though detailed records of end-use energy consumption were not typically maintained by an establishment, knowledgeable individuals (such as an energy manager) within those establishments could provide reasonably accurate estimates (in percentages) of end-use energy consumption. (Summaries of these Industrial Roundtables will be available at a later date.) To further simplify this section, the 13 specified end uses are separated into energy transformation, process, and non-process categories. Consumption is to be reported as an estimated percent of total consumption for each energy source. Using data obtained in Section IV with that in Sections I and II (Non-combustible and Combustible Energy Sources respectively) it will be possible for the first time to estimate energy use within manufacturing establishments for specific end uses. Energy sources will be listed across the page and include electricity, steam, total coal and coke, natural gas, total distillate fuel oil and diesel, total LPG and LNG (liquid natural gas), and residual fuel oil. The end uses of interest will be listed down the page and include the following:

A. Energy Transformation

1. Onsite steam production only (boiler use)
2. Onsite electricity generation only
3. Onsite cogeneration

B. Process

1. Direct process heating (e.g., kilns, furnances, ovens)
2. Direct process cooling and refrigeration

3. Direct machine drive (e.g., motors, pumps etc. associated with manufacturing process equipment)
4. Electro-chemical processes
5. Other (specify)

C. Non-Process

1. Facility heating, ventilation, and air conditioning
2. Facility lighting
3. Facility support other than numbers C1 and C2 above (e.g., cooking, water heating, and operation of other appliances not directly associated with manufacturing processes)
4. Onsite transportation
5. Other (specify)

Section V (Energy Technology/ Program Checklist). Again in response to data user requests and the requirements of the NES, each version of the questionnaire will contain this new section. The purpose of section V is to identify energy-efficient technologies and programs that are currently employed by the manufacturing sector. There are three versions of section V, one for each questionnaire version. Each version contains identical requests for data on the estimated square footage of buildings located at the establishment site (part A), participation in utility-sponsored Demand Side Management (DSM) programs (part B), and general technologies that could be implemented by any manufacturing establishment (part C). For part A, respondents are required to estimate which of 11 size categories best describes the total building square footage of their establishment and check the appropriate category. In addition, they are required to estimate which of four categories best identifies the heated and/or cooled proportion of square footage. For Part B, respondents are required to check whether or not their establishment took any action to improve energy efficiency or reduce energy costs in 1991, and, if so, check which of three categories most appropriately describes that action.

In addition to the list of general technologies included on all three versions of the questionnaire (part C), the EIA–846A version of the technology checklist identifies separate lists of technologies that are more specific to the food, textile and stone, clay, and glass industries. The EIA–846C version of the checklist identifies separate lists of technologies specific to the paper, chemical, and primary metal industries. The EIA–846B version contains only the general technologies.

III. Request for Comments

Prospective respondents and other interested parties should comment on the proposed revisions. The following general guidelines are provided to assist in the preparation of responses. Please indicate to which form(s) your comments apply.

As a potential respondent:

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Is it sufficiently clear that section IV, Estimated Percent Consumption by End use, requires only an estimate rather than recorded data? If not, how should the form and instructions be modified?

C. Is it sufficiently clear that section V, Energy Technology/Program Checklist, requires only an estimate of square footage, DSM participation, and current technologies? If not, how should the form and instructions be modified?

D. Can the data be submitted using the definitions included in the instructions?

E. Can data be submitted in accordance with the response time specified in the instructions?

F. Public reporting burden for this collection is estimated to average eight hours per response. How much time, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, do you estimate it will require you to complete and submit the required form(s)?

G. What is the estimated cost of completing these forms, including the direct and indirect costs associated with the data collection? Direct costs should include all costs, such as administrative costs, directly attributable to providing this information.

H. How can be form(s) be improved?

I. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the means of collection.

As a potential user:

A. Can you use data at the levels of detail indicated on the form(s)?

B. For what purpose would you use the data? Be specific.

C. How could the form(s) be improved to better meet your specific needs?

D. Are there alternate sources of data and do you use them? What are their deficiencies and/or strengths?

EIA is also interested in receiving comments from persons regarding their views on the need for the information contained in the Manufacturing Energy Consumption Survey.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form(s); they also will become a matter of public record.

Statutory Authorities: Sections 5(a), 5(b), 13(b), and 52 of Pub. L. No. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b) and 790a.

Issued in Washington, DC April 26, 1991.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 91–10429 Filed 5–1–91; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Docket No. 91–03–NG]

Hadson Gas Systems, Inc.; Order Granting Blanket Authorization to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of order granting blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Hadson Gas Systems, Inc. blanket authorization to import up to 50 Bcf of natural gas from Canada over a two-year period beginning on the date of first delivery.

A copy of the order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on April 26, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–10428 Filed 5–1–91; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER91–391–000, et al.]

Mid-Continent Area Power Pool, et al.; Electric Rate, Small Power Production and Interlocking Directorate Filings

April 25, 1991.

Take notice that the following filings have been made with the Commission:

1. Mid-Continent Area Power Pool

[Docket No. ER89-391-000]

Take notice that on April 15, 1991, the Mid-Continent Area Power Pool (MAPP) filed on behalf of the investor-owned public utility members of MAPP supplemental and amendatory information regarding proposed revisions to several of the Pool rate schedules for the purpose of incorporating formula rates. The schedules affected include Schedule B (Seasonal Participation Power), Schedule C (Emergency and Scheduled Outage Energy Service), Schedule E (Economy Energy), Schedule G (Operational Control Energy), Schedule H (Peaking Power), Schedule I (Short Term), Schedule K (System Participation Power), and Schedule M (General Purpose Energy) which is being added.

MAPP requests a retroactive effective date of May 1, 1989 for the rate change.

Comment date: May 6, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. Montaup Electric Company

[Docket No. ER-91-387-000]

Take notice that on April 17, 1991, Montaup Electric Company filed a "Notice of Cancellation" of its Rate Schedule FERC No. 85. The Notice of Cancellation provides that the effective date of cancellation of the rate schedule is October 31, 1988.

Rate Schedule FERC No. 85 was an agreement effective November 1, 1987 pursuant to which Montaup agreed to sell to Taunton Municipal Lighting Plant (Taunton) capacity and energy from the Canal No. 2 unit in exchange for capacity and energy from Taunton's Cleary No. 9 unit. Rate Schedule FERC No. 85 was accepted for filing by letter order issued February 18, 1988 in Docket No. ER88-193-000 and expired by its own terms on October 31, 1988.

Rate Schedule FERC No. 85 was superseded by Rate Schedule FERC No. 94 and Supplement No. 9 to Rate Schedule FPC No. 15, which were accepted by letter order dated April 12, 1991 in Docket No. ER91-305-000, to become effective November 1, 1988.

Comment date: May 10, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. PSI Energy, Inc.

[Docket No. ER91-379-000]

Take notice that PSI Energy, Inc. (PSI), formerly named Public Service Company of Indiana, Inc. on April 16, 1991, tendered for filing a supplement to Service Schedule D—Supplemental Power and Energy of the Power Coordination Agreement, dated August 27, 1982, as amended, between PSI and the Indiana Municipal Power Agency (IMPA), in order to provide certain Economic Development incentives under section 5 of said Service Schedule.

Such Economic Development incentives are for a new Kokoku Steel Cord Corporation manufacturing facility in Scottsburg, Indiana. The City of Scottsburg is a member of IMPA. The Economic Development incentives are limited to 10.5 megawatts, the expected load of the new facility.

PSI has requested waiver of the Commission's applicable requirements of part 35 of its Regulations not complied with, including any notice requirements of section 35.3. The requested effective date for such Economic Development incentives applicable to Kokoku Steel Cord Corporation is November 5, 1990.

Copies of the filing were served on the Board of Public Works and Safety, City of Scottsburg, the Indiana Municipal Power Agency and the Indiana Utility Regulatory Commission.

Comment date: May 10, 1991, in accordance with Standard Paragraph E at the end of this notice.

Southern California Edison Company

[Docket No. ER91-382-000]

Take notice that on April 17, 1991, Southern California Edison Company (Edison) tendered for filing, as an initial rate schedule, the following agreement, executed on March 22, 1991 by the respective parties:

Edison-IID Interruptible Transmission Service Agreement (Matrix) Between Southern California Edison Company (Edison) and The Imperial Irrigation District (IID)

The Agreement establishes the terms and conditions whereby Edison shall make available interruptible transmission service for IID's purchase of energy from a supplier or for IID's sale of energy to a purchaser.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: May 10, 1991, in accordance with Standard Paragraph E at the end of this notice.

Panda-Brandywine, L.P.

[Docket No. QF91-117-000]

On April 19, 1991, Panda-Brandywine, L.P. of 4100 Spring Valley, suite 1001, Dallas, Texas 75244, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located in the proximity of U.S. Highway 301 and Cedarville Road, approximately 1.5 miles south of Brandywine, Prince Georges County, Maryland, and will consist of two combustion turbine generators, two heat recovery boilers (HRBs) and an extraction/condensing steam turbine generator (STG). Steam recovered from the HRB and STG will be utilized in Carbon Dioxide plant. The net electric power production capacity of the facility will be 236.144 MW. The primary energy source will be natural gas. Installation of the facility is expected to commence in August 1992.

Comment date: On or before June 13, 1991, in accordance with Standard Paragraph E at the end of this notice

6. Bonneville Yuma Corporation

[Docket No. QF90-143-000]

On April 18, 1991, Bonneville Yuma Corporation (Applicant) tendered for filing an amendment to its filing in this docket.

The amendment revises the thermal requirement of Applicant's proposed greenhouse facility to reflect a reduction in the absorption cooling requirement, the elimination of an evaporative water treatment process and a reduction in the net electrical capacity of the facility from 53.5 MW to 52.89 MW.

Comment date: On or before May 23, 1991, in accordance with Standard Paragraph E at the end of this notice.

7. Terra Comfort Corporation

[Docket No. ER91-370-000]

Take notice that Terra Comfort Corporation (TC) on April 8, 1991, tendered for filing as an initial rate schedule an Operation, Maintenance and Dispatching Agreement wherein TC will provide black start services, emergency voltage and transmission support and emergency energy to Iowa Southern Utilities Company (ISU). TC proposes an effective date of January 1, 1990, and requests waiver of the Commission's notice requirement.

Copies of the filing were served upon ISU and upon the Iowa State Utilities Board.

Comment date: May 10, 1991, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211

and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10337 filed 5-1-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-1863-000, et al.]

Florida Gas Transmission Company, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Florida Gas Transmission Co.

[Docket No. CP91-1863-000]

April 24, 1991.

Take notice that on April 18, 1991, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP91-1863-000 a request pursuant to §§ 157.205, 157.212 and 284.223(b) of the Commission's Regulations under the Natural Gas Act for authorization to add two delivery points to an existing interruptible transportation service whereby FGT is transporting natural gas on behalf of Florida Power & Light Company (FPL) under its blanket certificate issued in Docket No. RP89-50, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

FGT states that FGT and FPL are not proposing any changes in the current authorized levels of interruptible transportation service. FGT states that the total volumes to be delivered to FPL under the existing interruptible transportation service agreement dated February 23, 1990 after this request will not exceed the total volumes authorized prior to this request. FGT indicates that the volumes to be delivered at the two added delivery points will be within the currently authorized maximum daily transportation quantity of 662,898 MMBtu under the existing interruptible transportation dated February 23, 1990 and will have no impact on peak day and annual gas deliveries to other FGT gas customers. FGT further states that the service proposed herein will be accomplished without constructing new facilities or rearranging presently authorized facilities.

FGT states that it will provide the service for FPL under the existing interruptible transportation service agreement dated February 23, 1990, as amended, by and between FGT and FPL, and that FGT would charge rates and abide by the terms and conditions of its Rate Schedule ITS-1.

Comment date: June 10, 1991, in accordance with Standard Paragraph G at the end of this notice.

2. United Gas Pipe Line Co.

[Docket No. CP91-1885-000]

April 24, 1991.

Take notice that on April 19, 1991, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77251-1478, filed a request in Docket No. CP91-1885-000 with the Commission pursuant to § 157.205 of the Commission's Regulations for authorization to construct and operate a two-inch delivery tap and related facilities under United's blanket certificate issued in Docket No. CP82-430-000 pursuant to section 7 of the Natural Gas Act (NGA), all as more fully set forth in the request which is open to public inspection.

United states that it would construct and operate the proposed facilities in Plaquemines Parish, Louisiana, to transport an estimated average of 250 Mcf of natural gas per day for LaSER Marketing Company (LaSER) to serve Shamrock Turbines under United's Rate Schedule ITS. United estimates that the proposed facilities would cost $35,000. United also states that LaSER would reimburse United for all costs resulting from the proposed facilities. United indicates that it is authorized in Docket No. CP89-136-000 to provide all of LaSER's natural gas requirements for resale and distribution through LaSER's billing area and the adjoining area. United would transport LaSER's gas under its blanket certificate in Docket No. CP88-6-000.

United states that it has sufficient capacity to provide the additional service without detriment or disadvantage to its other existing customers and that its FERC Gas Tariff does not prohibit the addition of new delivery points.

Comment date: June 10, 1991, in accordance with Standard Paragraph G at the end of this notice.

3. Midwestern Gas Transmission Co.

[Docket No. CP91-1908-000]

April 25, 1991.

Take notice that on April 24, 1991, Midwestern Gas Transmission Company (Midwestern), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP91-1908-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for North Canadian Marketing Corporation, a marketer, under the blanket certificate issued in Docket No. CP90-174-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Midwestern states that, pursuant to an agreement dated March 27, 1991, under its Rate Schedule IT, it proposes to transport up to 150,000 dekatherms (Dt) per day equivalent of natural gas. Midwestern indicates that it would tranport 150,000 Dt on an average day and 54,750,000 Dt annually. Midwestern further indicates that the gas would be transported from Tennessee, Indiana, Illinois, and Kentucky, and would be redelivered in Tennessee, Illinois, Indiana, and Kentucky. Midwestern states that the ultimate point of delivery is located in the State of Illinois.

Midwestern advises that service under § 284.223(a) commenced April 10, 1991, as reported in Docket No. ST91-8294-000.

Comment date: June 10, 1991, in accordance with Standard paragraph G at the end of this notice.

4. Enron Gas Marketing, Inc.

[Docket No. CI87-547-010]

April 25, 1991.

Take notice that on April 18, 1991, Enron Gas Marketing, Inc. (Applicant) of P.O. Box 1188, Houston, Texas 77251-1188 filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder to amend its limited-term blanket certificate with pregranted abandonment previously issued by the Commission in Docket No. CI87-547-009 to include authorization to make sales for resale in interstate commerce of natural gas purchased from local distribution companies or intrastate pipelines or other non-first sellers, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: May 16, 1991, in accordance with Standard paragraph J at the end of this notice.

Texas Gas Transmission Corporation

[Dockets Nos. CP91-1898—000 [1], CP91-1899—000]

April 25, 1991.

Take notice that on April 23, 1991, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street Owensboro, Kentucky 42301,filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport natural gas on behalf of various shippers under its blanket certificates issued in Docket No. CP88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the date of the interruptible transportation agreement between Texas Gas and the respective shipper, the contract number of the gas transportation agreement, function of the shipper, i.e., marketer, intrastate pipeline etc., the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket number and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by Texas Gas and is included in the attached appendix.

Texas Gas alleges that it would provide the proposed service for each shipper under an executed gas transportation agreement and would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: June 10, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No., trans. agree., (contract no.)	Shipper name	Shipper's function	Peak Day,[1] avg. annual	Points of		Start up date, rate schedule, service type	Related [2] dockets
				Receipt	Delivery		
CP91-1898-000 10-10-90 (T3681)	K N Gas Marketing Inc.	Marketer	150,000 80,000 1,900,000	Existing Receipt Points	Existing Delivery Points	3-12-91 IT, Interruptible.	ST91-7798-000.
CP91-1899-000 11-15-90 (T3724)	K N Gas Marketing Inc.	Marketer	150,000 70,000 1,800,000	Existing Receipt Points	Existing Delivery Points	3-12-91, IT, Interruptible.	ST91-7797-000.

[1] Quantities are shown in MMBtu.
[2] The ST docket indicates that 120-day transportation service was initiated under Section 284.223 (a) of the Commission's Regulations.

National Fuel Gas Supply Corporation

[Docket Nos. CP91-1763-000, CP91-1764-000, CP91-1765-000, CP91-1766-000, CP91-1767-000]

April 25, 1991.

Take notice that the above referenced company (Applicant) filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under §284.223 of the Commission's Regulations has been provided by the Applicant and is included in the attached appendix.

The Applicant also states that it would provide the service for each shipper under an executed transportation agreement, and that the Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment Date: June 10, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day,[1] avg., annual	Points of		Start up date, rate schedule	Related [2] dockets
				Receipt	Delivery		
CP91-1763-000 4-9-91	National Fuel Gas Supply Corporation, 10 Lafayette Square, Buffalo, NY 14203.	The Electric Materials Co.	400 400 146,000	NY, PA, OH	NY, PA, OH	2-1-91, IT-1	CP89-1582-000, ST91-7341-000.
CP91-1764-000 4-9-91	National Fuel Gas Supply Corporation, 10 Lafayette Square, Buffalo, NY 14203.	Highland Land & Minerals, Inc.	33 33 12,045	NY, PA, OH	NY, PA, OH	2-1-91, IT-1	CP89-1582-000, ST91-7396-000.
CP91-1765-000 4-9-91	National Fuel Gas Supply Corporation, 10 Lafayette Square, Buffalo, NY 14203.	Commodore Gas Co.	3,000 3,000 1,095,000	NY, PA, OH	NY, PA, OH	2-13-91, IT-1	CP89-1582-000, ST91-7483-000.

Docket No. (date filed)	Applicant	Shipper name	Peak day,[1] avg., annual	Points of		Start up date, rate schedule	Related [2] dockets
				Receipt	Delivery		
CP91-1766-000 4-9-91	National Fuel Gas Supply Corporation, 10 Lafayette Square, Buffalo, NY 14203.	Westvaco Corporation.	500 500 182,500	NY, PA, OH	NY, PA, OH	2-1-91, IT-1	CP89-1582-000, ST91-7413-000.
CP91-1767-000 4-9-91	National Fuel Gas Supply Corporation, 10 Lafayette Square, Buffalo, NY 14203.	Entrade Corporation.	100,000 100,000 36,500,000	NY, PA, OH	NY, PA, OH	2-1-91, IT-1	CP89-1582-000, ST91-7424-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

7. United Gas Pipe Line Co.

[Docket Nos. CP91-1894-000 [3], CP91-1985-000]

April 25, 1991.

Take notice that on April 22, 1991, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas, 77251-1478, filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport natural gas on behalf of various shippers under its blanket certificates issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the date of the interruptible transportation agreement between United and the respective shipper, the contract number of the interruptible transportation agreement, function of the shipper, i.e., marketer or intrastate pipeline, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket number and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations have been provided by United and is included in the attached appendix.

United alleges that it would provide the proposed service for each shipper under an executed transportation service agreement and would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: June 10, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket No., trans. agree, (contract No.)	Shipper name	Shipper's function	Peak day,[1] avg, annual	Point of		Start up date, rate schedule, service type	Related [2] dockets
				Receipt	Delivery		
CP91-1894-000 1-13-88 (1422)	Tejas Hydrocarbons Company.	Marketer	154,500 154,500 56,392,500	Existing Receipt Point	Existing Delivery Points	3-19-91, ITS, Interruptible.	ST91-8189-000.
CP91-1895-000 12-31-86 (2325)	Pennzoil Gas Marketing Company.	Intrastate Pipeline.	206,000 206,000 75,190,000	Existing Receipt Points	Existing Delivery Points	3-6-91, ITS Interruptible.	ST91-8041-000.

[1] Quantities are shown in MMBtu.
[2] The ST docket indicates that 120-day transportation service as initiated under Section 284.223(a) of the Commission's Regulations.

Texas Gas Transmission Corporation Colorado Interstate Gas Co.

[Docket Nos. CP91-1900-000, CP91-1901-000]

April 25, 1991.

Take notice that on April 23, 1991, Texas Gas Transmission Corporation, 3800 Frederica Street, Owensboro, Kentucky 42301, and Colorado Interstate Gas Company, P.O. Box 1087, Colorado Springs, Colorado 80944, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued in Docket No. CP88-686-000 and Docket No. CP86-589, *et al.*, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[4]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: June 10, 1991, in accordance with Standard Paragraph G at the end of this notice.

[4] These prior notice requests are not consolidated.

Docket No. (dated filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-1900-000 (4-23-91)	K N Gas Marketing Inc. (Marketer).	150,000 75,000 1,800,000	Various	IN, KY, IL	11-5-90, IT, Interruptible.	ST91-7796-000, 3-12-91.
CP91-1901-000 (4-23-91)	Coastal Gas Marketing Company (Marketer).	50,000 20,000 7,300,000 [1]	CO, OK, TX, WY, KS	WY	1-15-91, IT, Interruptible.	ST91-6851-000, 1-15-91.

[1] CIG's quantities are in Mcf.

Chevron U.S.A. Inc.

v.

9. Southern Natural Gas Company

[Docket No. CP91-1852-000]

April 25, 1991.

Take notice that on April 16, 1991, Chevron U.S.A. Inc. (Chevron), P.O. Box 3725, Houston, Texas 77253-3725, filed in Docket No. CP91-1852-000 a complaint against Southern Natural Gas Company (Southern) in response to Southern's recently announced intent to discontinue the receipt of Chevron's West Delta Block 27 gas on Southern's Venice-Lake Washington line and Southern discontinuous open access transportation of processed gas on said line as well, all as more fully set forth in the complaint which is on file with the Commission and open to public inspection.

In its complaint proceeding, Chevron seeks a Commission order that:

(1) Southern may not discontinue the receipt of West Delta Block 27 Field gas on the Venice-Lake Washington line unless and until Southern first obtains the Commission's approval after due hearing, under 7(b) of the Natural Gas Act, 15 U.S.C. 717f(b).

(2) The refusal to provide part 284 transportation of processed gas on the Venice-Lake Washington line constitutes discrimination in violation of 18 CFR 284.8(b) and 284.9(b). In this connection, Chevron requests the Commission to issue an order barring the enforcement and directing the removal of the last sentence of section 13.2 of the General Terms and Conditions for Rate Schedules FT and IT from Southern's FERC Gas Tariff.

Chevron contends that Southern's threatened change in usage of its Venice-Lake Washington line forms the basis for Chevron's complaint. Chevron asserts that Southern was authorized to construct and operate the Venice-Lake Washington line for the transportation and sale for resale of gas produced from the West Delta Block 27 Field in Docket Nos. CP63-26, *et al.*[5] Chevron alleges that the June 22, 1962, gas purchase agreement between Southern and Gulf Oil Corporation (subsequently renamed Chevron U.S.A. Inc.) reserved the right for Chevron to process gas produced from the West Delta Block 27 Field. While Chevron admits that the Commission did not expressly limit the certificate for the Venice-Lake Washington line to the transportation of West Delta Block 27 Field gas, the certificate was granted upon the terms "as hereinbefore set forth and as more fully described in [Southern's] application."

The application alleges that Southern does not want to transport Chevron's gas on the Venice-Lake Washington line in order to open up capacity for Southern to move offshore volumes purchased under a new gas purchase agreement with Exxon Corporation (Exxon). Southern filed in Docket No. CP91-2155-000 to construct a 59.3 mile pipeline to connect an Exxon platform around the Mississippi Canyon Area blocks in Federal offshore waters with the Venice-Lake Washington line. Chevron contends that Southern's transportation of Exxon's "wet" gas will displace the transportation of Chevron's "dry" gas in the Venice-Lake Washington line.

The application contends that Southern can not stop taking Chevron's West Delta Block 27 volumes without first obtaining an abandonment order from this Commission. The application further contends that terminating the transportation of processed gas from other production areas does not fall within the category of "wet" lines as described in Southern's tariff as filed with the FERC. The application asserts that Southern believes it has the unfettered right at any time of its choosing to declare a line to be "wet" by fiat, notwithstanding that the Venice-Lake Washington line having been dry for nearly 30 years. Chevron avers that under the pretext of transporting only "wet" gas, the result would be that Southern's own merchant gas is accorded preference over the gas of competing sellers such as Chevron. To correct this situation, Chevron requests that the Commission issue an order barring enforcement and directing removal of the tariff language cited by Southern to justify converting the Venice-Lake Washington from a "wet" to a "dry" line.

Comment date: May 10, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

10. ALG Gas Supply Company et al., K N Gas Marketing, Inc.

[Docket Nos. CI88-452-003,[6] CI89-382-002]

April 25, 1991.

Take notice that on April 15, 1991, K N Gas Marketing, Inc. of P.O. Box 281304, Lakewood, Colorado 80228-9304, and on April 19, 1991, ALG Gas Supply Company, *et al.*[7] of 400 East Capitol Street, Little Rock, Arkansas 72202 (Applicants) each filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder to amend their blanket limited-term certificates with pregranted abandonment previously issued by the Commission in Docket Nos. CI88-452-002 and CI89-382-001 for terms expiring March 31, 1991, to extend the term of such authorizations, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

Comment date: May 2, 1991, in accordance with Standard Paragraph J at the end of the notice.

11. South Georgia Natural Gas Co., South Georgia Natural Gas Co., Southern Natural Gas Co.

[Docket Nos. CP91-1905-000, CP91-1906-000, CP91-1907-000]

April 25, 1991.

Take notice that on April 23, 1991, the above referenced companies (Applicants) filed in their respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the

[5] See, Southern Natural Gas Company, *et al.*, 31 FPC 789 (1964).

[6] This notice does not provide for consolidation for hearing of the several matters covered herein.

[7] The *et al.* parties are ALG Gas Supply Company of Arkansas, ALG Gas Supply Company of Kansas, ALG Gas Supply Company of Louisiana, ALG Gas Supply Company of Oklahoma and ALG Gas Supply Company of Texas.

Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[8]

[8] These prior notice requests are not consolidated.

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: June 10, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No.	Applicant	Shipper name	Peak day,[1] average, annual	Points of		Start up date, rate schedule	Related [2] dockets
				Receipt	Delivery		
CP91-1905-000	South Georgia Natural Gas Company, P.O. Box 2563, Birmingham, AL 35202-2563.	City of Dawson, GA.	606 606 221,190	AL	GA	3-1-91, FT	CP90-2125-000, ST91-7988-000.
CP91-1906-000	South Georgia Natural Gas Company, P.O. Box 2563, Birmingham, AL 35202-2563.	Gold Kist, Inc.	[3] 10,000 10,000 3,650,000	AL	FL	3-11-91, IT	CP90-2125-000, ST91-7989-000.
CP91-1907-000	Southern Natural Gas Company, P.O. Box 2563 Birmingham, AL 35202-2563.	Cullman-Jefferson Counties Gas District.	6,000 6,000 2,190,000	TX, MS, LA, AL, Off TX, Off LA.	AL	3-1-91, FT	CP88-316-000, ST91-7990-000.

[1] Quantities are shown in Mcf unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.
[3] Volumes in MMBtu.

12. Great Lakes Gas Transmission Limited Partnership

[Docket No. CP91-1884-000]

April 25, 1991.

Take notice that on April 19, 1991, Great Lakes Gas Transmission Limited Partnership (Great Lakes), One Woodward Avenue, suite 1600, Detroit, Michigan 48226, filed in Docket No. CP91-1884-000 an application pursuant to section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing Great Lakes to provide gas transportation service on a firm basis, for Rochester Gas and Electric Corporation (Rochester), a New York gas distribution company, and to construct and operate facilities necessary to provide such service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In particular, Great Lakes states that Rochester has requested that Great Lakes transport up to 55,500 Mcf per day (Rochester volumes) from various points of interconnection between the facilities of Great Lakes and ANR Pipeline Company (ANR Pipeline), located at Capac, Farwell, and Muttonville, Michigan (respectively, the Capac, Farwell, and Muttonville Receipt Points) to a point of interconnection between the facilities of Great Lakes and TransCanada Pipelines Limited (TransCanada) located on the international boundary, near St. Clair, Michigan (St. Clair Delivery Point).

The Rochester volumes received at the Capac, Farwell, and Muttonville Receipt Points would come from various domestic suppliers and from storage. Upon transportation and delivery by Great Lakes of the Rochester volumes to the St. Clair Delivery Point, TansCanada will tranport the volumes through its facilities and those of Union Gas Limited (Union) and deliver the volumes to a proposed point of interconnection between the facilities of TransCanada and Empire State Pipeline (Empire), on the international boundary near Niagara Falls, New York. The gas will be transported by Empire to proposed points of interconnection between the facilities of Rochester and Empire.

To implement the arrangements, Great Lakes and Rochester have entered into a Transportation Service Agreement (Agreement) dated April 2, 1991. The Agreement provides for a 14-year initial term for the firm service. To provide the service, Great Lakes proposes to construct 8.0 miles of 36-inch diameter pipeline loop. The estimated cost of the proposed transmission facilities is $9,000,000. The facilities proposed in this application will be financed with funds generated internally, together with borrowings from banks or commercial paper if required. It is contemplated that any short term borrowings would be retired with funds generated internally.

The Agreement states that the reservation fee and utilization fee for the firm transportation rate will be the equivalent of a maximum rate under Rate Schedule FT of Great Lakes' FERC Gas Tariff, Original Volume No. 3 for service similar to that provided to Rochester.

It is stated that the proposed transportation service will permit Rochester to diversify its system supply, to meet projected increasing needs, and to use its storage services more efficiently.

Comment date: May 15, 1991, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commnission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene, is filed within the time required herein, if the Commisson on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10338 Filed 5-1-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-103-002]

Alabama-Tennessee Natural Gas Company; Tariff Filing

April 25, 1991.

Take notice that Alabama-Tennessee Natural Gas Company ("Alabama-Tennessee") on April 23, 1991, tendered for filing a second amendment to its February 28, 1991 filing in this proceeding proposing changes to its FERC Gas Tariff, First Revised Volume No. 1 concerning the implementation of a new take-or-pay cost recovery mechanism in compliance with Order Nos. 528 and 528-A. Alabama-Tennessee has requested that the April 23, 1991 filing become effective July 1, 1991 instead of May 1, 1991 as it requested in its first amendment to this filing which it submitted on March 26, 1991. Alabama-Tennessee states that it is seeking this additional time of approximately sixty days in order to provide the parties sufficient time to complete the drafting for filing of a settlement agreement which Alabama-Tennessee has achieved with its affected jurisdictional sales customers. Alabama-Tennessee proposes no other changes to either its March 26, 1991 filing or its February 28, 1991 filing.

Alabama-Tennessee states that this second amendment is being made contingent upon the Commission's approval of the request sought in its filing. In the event the Commission issues an order accepting Alabama-Tennessee's March 26, 1991 filing, Alabama-Tennessee states that its second amendment should be deemed withdrawn and no action should be taken on the revised tariff sheets submitted therewith. In such case, Alabama-Tennessee requests that its March 26, 1991 filing be accepted and made effective May 1, 1991, as proposed therein.

Alabama-Tennessee states that due to unanticipated software problems, Alabama-Tennessee has been unable to submit its filing on electronic media as required under the Commission's Regulations. Alabama-Tennessee requests that the Commission grant a limited, one-week waiver of its regulations in order to submit this information on or before April 30, 1991. Alabama-Tennessee also requests that the Commission grant it any other waiver of the Commission's Regulations which may be required in order to accept its revised tariff sheets as requested.

Alabama-Tennessee states that copies of this amendment have been mailed to its jurisdictional customers, interested public bodies and all persons on the Commission's official service list in the captioned docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before May 2, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10341 Filed 5-1-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA91-1-20-001]

Algonquin Gas Transmission Company, Proposed Changes in FERC Gas Tariff

April 25, 1991.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on April 19, 1991, tendered for filing proposed changes in its FERC Gas

Tariff, Third Revised Volume No. 1, as set forth in the revised tariff sheets:

Proposed to be effective March 1, 1991

Sub 1 Rev Sheet No. 21
Sub 1 Rev Sheet No. 22
Sub 1 Rev Sheet No. 26
Sub 1 Rev Sheet No. 27
Sub 1 Rev Sheet No. 28
Sub 1 Rev Sheet No. 29

Proposed to be effective March 7, 1991

2 Rev Sheet No. 21
2 Rev Sheet No. 22
2 Rev Sheet No. 26
2 Rev Sheet No. 27
2 Rev Sheet No. 28
2 Rev Sheet No. 29

Algonquin states that it is making the instant filing to revise the proposed Surcharge Adjustment for the one year period beginning on March 1, 1991 to implement the Commission's approval of Algonquin's revised working papers used in calculating the one time exchange adjustment and the appropriate treatment of its monthly exchange activity for the period May 1, 1987 through October 31, 1989. In addition, the calculation of the monthly interest rate factor has been revised from an accuracy of six decimal places to four decimal places to more closely comply with the requirements of Form 542–PGA, Schedule C2. The adjusting entries to Account No. 191 total $614,679 are to be amortized over the one year period beginning March 1, 1991. Proper amortization of the Adjustments requires a revision to the demand surcharge of Rate Schedules F–1, F–2, F–3, F–4 and WS–1 to $0.034 per MMBtu and a commodity surcharge of $0.0084¢ per MMBtu. The commodity surcharges for Rate Schedules I–1, E–1, and WS–1 Excess are proposed to be $0.0084, $0.0096 and $0.0152 per MMBtu, respectively.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before May 2, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary

[FR Doc. 91–10342 Filed 5–1–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM91–8–20–000]

Algonquin Gas Transmission Company; Proposed Changes in FERC Gas Tariff

April 25, 1991

Take notice that Algonquin Gas Transmission Company ("Algonquin") on April 23, 1991, filed proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1, as set forth in the revised tariff sheets, to be effective on May 27, 1991.

Appendix A Tariff Sheets

First Revised Sheet No. 92.
First Revised Sheet No. 93.
First Revised Sheet No. 674D.
First Revised Sheet No. 674G.
First Revised Sheet No. 674K.
First Revised Sheet No. 674L.
First Revised Sheet No. 674M.
First Revised Sheet No. 674N.
First Revised Sheet No. 674O.

Appendix B Tariff Sheets

First Revised Sheet No. 91.
Sub. First Revised Sheet No. 92.

Algonquin states that the purpose of this filing is to update the amount of take-or-pay charges to be billed to Algonquin by its pipeline suppliers and to be recovered by Algonquin by operation of section 33.7 of the General Terms and Conditions to Algonquin's FERC Gas Tariff, Third Revised Volume No. 1. Algonquin also states that the revised take-or-pay surcharges are the result of revised allocation methods imposed by its pipeline suppliers in response to the Commission's Order No. 528. Algonquin further states that its pipeline suppliers which have received approval to bill revised take-or-pay surcharges, as reflected in Algonquin's filing herein, are: CNG Transmission Corporation, National Fuel Gas Supply Corporation and Texas Eastern Transmission Corporation.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 2, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–10343 Filed 5–1–91; 8:45 am]

BILLING CODE 6717–01–M

Federal Energy Regulatory Commission

[Docket No. RP91–92–001]

Colorado Interstate Gas Company Tariff Filing

April 25, 1991.

Take note that on April 22, 1991, Colorado Interstate Gas Company ("CIG") tendered for filing the following tariff sheets to its FERC Gas Tariff Original Volume No. 3, to be effective as shown:

Tariff sheets	Effective date
Substitute Third Revised Sheet No. 4 and Substitute Second Revised Sheet No. 5.	March 21, 1991.
Substitute Fourth Revised Sheet No. 4 and Substitute Third Revised Sheet No. 5.	April 21, 1991.
Substitute First Revised Sheet No. 7.	March 21, 1991.
Substitute First Revised Sheet No. 23.	March 21, 1991.
Substitute First Revised Sheet No. 27.	March 21, 1991.
Substitute First Revised Sheet No. 79.	March 21, 1991.

CIG states that the purposes of this filing are (1) To comply with the Order issued March 21, 1991 in Docket No. RP91–92–000 and (2) to change the method of presentation of the annual charge adjustment to that authorized prior to such changes as authorized by the March 21, 1991 Order in Docket No. RP91–92–000.

CIG requests any necessary waiver of the Commission's regulations to permit such tariff sheets to become effective as proposed.

CIG states that copies of the filing were served upon all of the parties listed on the official service list complied by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Commission, 825 North Capitol Street, NE., Washington, DC. 20426 by May 2, 1991, in accordance with rules 211 and

214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10344 Filed 5-1-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-2-23-002]

Eastern Shore Natural Gas Company; Proposed Changes in FERC Gas Tariff

April 25, 1991.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on April 19, 1991 certain revised tariff sheets included in appendix A attached to the filing. Such sheets are proposed to be effective May 1, 1991.

ESNG states that such tariff sheets are being filed pursuant to § 154.308 of the Commission's regulations and sections 21.2 and 21.4 of the General Terms and Conditions of ESNG's FERC Gas Tariff to reflect changes in ESNG's jurisdictional rates. ESNG inadvertently used an incorrect docket when tracking Transcontinental Gas Pipe Line Corporation's most currently effective storage rates. The substitute tariff sheets are being filed hereto to correct the LSS Quantity Injected Charge from $.1011 to $.1007, which properly tracks most current storage rates.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested States Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practrice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before May 2, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary

[FR Doc. 91-10345 Filed 5-1-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-139-000]

El Paso Natural Gas Company; Compliance Tariff Filing

April 25, 1991

Take notice that on April 23, 1991, El Paso Natural Gas Company ("El Paso") tendered for filing and acceptance, pursuant to part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act and in compliance with ordering paragraph (J) of the Commission's "Order Accepting in Part and Modifying in Part Amended Offer of Settlement" issued March 20, 1991 at Docket No. RP88-44-000, *et al.*, certain tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1. El Paso has requested that the tendered tariff sheets be accepted for filing and permitted to become effective May 1, 1991.

El Paso states that ordering paragraph (J) of the Commission's order issued March 20, 1991 at Docket No. RP88-44-000, *et al.*, directs El Paso to file a City of Willcox, Arizona ("Willcox") specific take-or-pay cost recovery filing pursuant to the procedures set out in Order No. 528 within forty-five (45) days of the issuance of the order.

El Paso states that is has revised section 21, Take-or-Pay Buyout and Buydown Cost Recovery, contained in its Second Revised Volume No. 1 Tariff to establish the method of allocating the Monthly Direct Charge for take-or-pay cost recovery to Willcox, and the Statement of Rates tariff sheets to reflect the percentage and direct bill amount for willcox utilizing the new allocation. El Paso states that it has incorporated revisions to section 21 of its Volume No. 1 Tariff filed April 16, 1991 at Docket No. RP91-26-003, which remove all references to the purchase deficiency method providing in lieu thereof an allocation percentage the supporting parties in Docket No. RP88-44-000, *et al.*, agreed on for direct billing fixed take-or-pay costs. El Paso states that the allocation proposed is unrelated to the purchase deficiency method that Willcox strongly opposed and is in compliance with the directives of the Commission's Order Nos. 528 and 528-A and will resolve the outstanding issue of Willcox's obligation to pay their equitable share of take-or-pay buyout and buydown direct bill costs, originally filed at Docket Nos. RP88-184-000, RP89-132-000, *et al.*, and RP90-81-000 as well as the cost recovery filed at Docket No. RP91-26-000 and any subsequent take-or-pay costs El Paso may file to recover.

El Paso has proposed an allocation method utilizing Billing Determinants which have been established at Docket No. RP88-44-000, *et al.*, for each of El Paso's sales customers. El Paso states that in converting firm sales entitlements to firm transportation as set forth in its Settlement at Docket No. RP88-44-000, *et al.*, the Billing Determinants for full requirements are a proxy for contract demand but nevertheless do not constitute limitation on peak-day requirements. El Paso states that it has calculated a Billing Determinant Percentage by dividing Willcox's Billing Determinant (established in Settlement) by the aggregate of all Billing Determinants of its customers to allocate Willcox's monthly direct charge for take-or-pay costs.

El Paso states that copies of the filing were served upon all interstate pipeline system sales customers of El Paso and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 2, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but all not serve to make protestant parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary

[FR Doc. 91-10346 Filed 5-1-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-26-004]

El Paso Natural Gas Co.; Motion to Place Tariff Sheets Into Effect

April 25, 1991.

Take notice that El Paso Natural Gas Company (El Paso), on April 19, 1991, tendered for filing a motion to place into effect on May 1, 1991 certain tariff

sheets to its Second Revised Volume No. 1, First Revised Volume No. 1–A, Third Revised Volume No. 2 and Original Volume No. 2A FERC Gas Tariffs, which were suspended until May 1, 1991 by the Commission's order issued in this proceeding on December 14, 1990, as modified by order issued April 17, 1991 at Docket No. RP91–26–001.

El Paso states that copies of the filing were served upon each person designated on the official service list compiled by the Secretary in Docket No. RP91–26–000, and, otherwise, upon all interstate pipeline system customers of El Paso and all interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before May 2, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–10347 Filed 5–1–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EC91–12–000]

Georgia Power Co.; Filing of Application to Sell Jurisdictional Facilities

April 24, 1991.

Take notice that on April 22, 1991, Georgia Power Company ("GPC") tendered for filing an application for an Order pursuant to section 203 of the Federal Power Act authorizing it to sell certain undivided ownership interests in Plant Robert W. Scherer Unit No. 4 substation and switchyard facilities and certain undivided ownership interests in the common switchyard facilities of Plant Robert W. Scherer to Jacksonville Electric Authority. GPC proposes to sell the facilities at two closings beginning in 1991.

Any person desiring to be heard or to protest the filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) no later than May 17, 1991. All such protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–10340 Filed 5–1–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP88–115–000, RP90–104–000 and RP90–192–000.]

Texas Gas Transmission Corp.; Informal Settlement Conference

April 26, 1991.

Take notice that an informal settlement conference will be convened in these proceedings on May 21, 1991, at 10:30 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. The conference will continue on May 22, if necessary.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Donald A. Heydt (202) 208–0248 or Joanne Leveque (202) 208–5705.

Lois D. Cashell,

Secretary.

[FR Doc. 91–10349 Filed 5–1–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ90–4–49–003]

Williston Basin Interstate Pipeline Co.; Amendment to Purchased Gas Adjustment Filing and Compliance Filing

April 25, 1991.

Take notice that on April 22, 1991, Williston Basin Interstate Pipeline Company (Williston Basin), suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, tendered for filing, as part of its FERC Gas Tariff the revised tariff sheets listed on appendix A attached to the filing.

The proposed effective date of the tariff sheets is May 1, 1991.

Williston Basin states that Substitute Thirty-fourth Revised Sheet No. 10 (First Revised Volume No. 1) and Substitute Thirty-fifth Revised Sheet No.10 (Original Volume No. 2) reflect a decrease in the Current Gas Cost Adjustment applicable to Rate Schedules G–1, SGS–1, E–1 and X–1 of 18.561 cents per dkt as compared to that contained in the Company's December 31, 1990 PGA filing in Docket No. TQ91–2–49–000, which became effective February 1, 1991.

Williston Basin also states that Substitute Twenty-seventh Revised Sheet No. 11 and Substitute Thirty-third Revised Sheet No. 12 (Original Volume No. 1–A) and Substitute Thirty-fifth Revised Sheet No.10 (Original Volume No. 2), reflect a revised fuel reimbursement percentage of 2.652% applicable to certain transportation rate schedules.

Williston Basin further states that Substitute Twenty-seventh Revised Sheet No. 11, Substitute Thirty-third Revised Sheet No.12 and Substitute Sixteenth Revised Sheet No. 97A (Original Volume No. 1–A), Substitute Twenty-second Revised Sheet Nos. 10 and 11 (Original Volume No. 1–B), Substitute Thirty-fifth Revised Sheet No. 10 and Substitute Twenty-eight Revised Sheet No. 11B (Original Volume No. 2) reflect a increase of .00175 cents per dkt in the fuel reimbursement charge component of the Company's relevant transportation rates as compared to that contained in the Company's December 31, 1990 filing in Docket No. TQ–91–2–49–000. Such increase in the fuel reimbursement charge is a result of the changes in Williston Basin's average cost of purchased gas.

Williston Basin states that it is submitting the instant filing, without prejudice to rights on rehearing, in compliance with the Commission's March 20, 1991 "Order Terminating Technical Conference" in Docket Nos. TQ90–4–49–000 and RP90–113–000 and as an amendment to its quarterly Purchased Gas Adjustment (PGA) filing, filed on April 1, 1991 in Docket No. TQ91–3–49–000. Pursuant to the Commission's March 20, 1991 Order, Williston Basin states it has filed revisions to its PGA tariff clause to eliminate from the calculation of its PGA current and surcharge gas cost adjustments, the effects of the non-sales-related (transportation) Company Use and Lost and Unaccounted For gas quantities. Williston Basin states that a concomitant revision was made to its Original Volume Nos. 1–A, 1–B and 2 transportation tariffs to reflect the implementation of a new Company Use and Lost and Unaccounted For gas tracking tariff provision.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before May 2, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10350 Filed 5-1-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $6,769,956.76, plus accrued interest, in overcharges to the customers of the New England Petroleum Co. (NEPCO), during the period January through July 1974. These overcharges were caused by Citronelle-Mobile Gathering, Inc. Citmoco Services, Inc., and Bart B. Chamberlain (collectively Citronelle) (Case No. KEF-0139). The overcharge funds were obtained by the DOE pursuant to an order of the United States District Court for the Southern District of Alabama. The OHA intends to submit a final report and recommendation to the Court concerning the distribution of the Citronelle overcharges. If the report meets with the Court's approval, the Court may order distribution in accordance with OHA's recommendations. This Decision and Order establishes the procedures which OHA will employ in this proceeding.

DATES AND ADDRESSES: Applications for Refund must be filed in duplicate and should be addressed to: Citronelle Special Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

All Applications for Refund should display a prominent reference to Case No. KEF-0139, and be postmarked by November 15, 1991.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-2094 (Mann); 586-2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute $6,769,956.76, plus accrued interest, in overcharges caused by Citronelle-Mobile Gathering, Inc., Citmoco Services, Inc., and Bart B. Chamberlain (collectively Citronelle) (Case No. KEF-0139). These funds were obtained by the DOE pursuant to an order of the United States District Court for the Southern District of Alabama. To carry out the Court's mandate in this case, OHA will identify eligible claimants, resolve any factual or legal contentions presented in the claims process, and submit a final report and recommendation to the Court concerning the distribution of the Citronelle overcharges. If the report meets with the Court's approval, the Court may order distribution in accordance with the recommendations in the final report.

During the period January through July 1974, Citronelle contracted with Grand Bahamas Petroleum Company (PETCO), a Bahamian refiner, to sell to PETCO certain barrels of Citronelle crude oil which PETCO agreed to refine and sell back to the United States-based affiliate, New England Petroleum Company (NEPCO). These sales to PETCO were at prices substantially higher than the prices Citronelle could have charged under the mandatory pricing regulations governing the sale of domestic crude oil. Under this scheme, Citronelle and PETCO attempted to bypass these regulations by labeling sales of Citronelle crude oil to PETCO "export sales." PETCO passed on the price increases to NEPCO, which, in turn, charged its customers a higher price for its refined petroleum products. Thus, NEPCO customers during that period ultimately bore the burden of Citronelle's overcharges.

The OHA has determined that it will accept claims from identifiable purchasers of petroleum products from NEPCO who may have been injured by Citronelle's overcharges. Applicants who claim that they purchased NEPCO products indirectly must show that their purchasers originated with NEPCO. In general, NEPCO sold petroleum products to customers in New England, New York, New Jersey, and Florida, including many public utilities. Appended to the Decision set forth below is a partial list of NEPCO customers. All NEPCO customers are advised that they should consider filing a refund claim.

The specific requirements which an applicant must meet in order to receive a refund are set out in Section IV of the Decision. Claimants who meet these specific requirements will be eligible to receive refunds based on the number of gallons of refined petroleum products which they purchased from NEPCO.

If any funds remain after meritorious claims are paid in the first stage, they will be used for indirect restitution in accordance with paragraph IV.B.2 of the Stripper Well Settlement Agreement, i.e., fifty percent to the States and fifty percent to the Federal Government.

Purchasers of regulated petroleum products from NEPCO during the period January through June 1974 may file Applications for Refund from the Citronelle fund. Applications for Refund must be postmarked by November 15, 1991. Instructions for the completion of refund applications are set forth in the Decision that immediately follows this notice. Applications for Refund should be sent to the address listed at the beginning of this notice.

Unless labeled as "confidential," all submissions will be made available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: April 26, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order—Implementation of Special Refund Procedures

April 26, 1991.

Name of Case: Citronelle-Mobile Gathering, Inc.

Date of Filing: August 17, 1989.

Case Number: KEF-0139.

On March 17, 1988, the United States District Court for the Southern District of Alabama issued an order in *Citronelle-Mobile Gathering, Inc., et al.* v. *John Herrington, et al., and United States* directing the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) to make certain determinations and recommendations,

in compliance with the DOE's special refund procedures, 10 CFR part 205, subpart V (subpart V), concerning the distribution of $6,769,956.76, plus interest, in overcharges caused by Citronelle. On March 14, 1989, OHA filed a Report with the District Court in which it outlined its proposal to distribute the Citronelle overcharges in accordance with Subpart V. To carry out the Court's mandate in this case, OHA will identify, through the record in the litigation and through public notice, all eligible claimants. OHA will consider questions of injury and resolve any factual or legal contentions presented in the claims process. It will then submit to the Court a final report and recommendation as to the distribution of the Citronelle overcharges. If the report meets with the Court's approval, the Court may order distribution in accordance with the recommendations in the final report. This Decision and Order establishes the procedures which OHA will employ in this proceeding.

I. Background

This proceeding arises out of protracted litigation originally instituted between Citronelle-Mobile Gathering, Inc. (Citronelle) and the Federal Energy Administration (FEA), a predecessor of the DOE. The original plaintiffs (now counterclaim defendents) in the litigation include Citronelle, Citmoco Services, Inc. (Citmoco), and Bart B. Chamberlain (Chamberlain), the president, a director, and 90 percent shareholder of Citronelle, and president, a director, and 87.5 percent shareholder of Citmoco (collectively, the Citronelle entities). Chamberlain is also the owner of certain crude oil produced from the Citronelle Field located in Mobile County, Alabama. At all times relevant to this proceeding, Citronelle purchased crude oil produced from the Citronelle Field. Citmoco stored crude oil purchased, transported, and sold by Citronelle.

During the period January through July 1974, Chamberlain contracted with Grand Bahamas Petroleum Company (PETCO), a Bahamian refiner, to sell to PETCO certain barrels of Citronelle crude oil which PETCO agreed to refine and sell back to its United States-based affiliate, New England Petroleum Company (NEPCO). [1] The first three shipments of crude oil were sold for $14.00 per barrel and the fourth for $13.00—prices substantially higher than the prices Citronelle could have charged under the regulations governing domestic sales of crude oil.[2]

The FEA initiated an audit of the above stated transactions to determine whether Citronelle had violated federal regulations governing the price of crude oil. That audit led to the filing of a declaratory action by Citronelle in which it sought a ruling that sales from Citronelle to PETCO were "export sales" and therefore exempt from the domestic petroleum pricing regulations. The United States counterclaimed, seeking restitution from Citronelle and Chamberlain personally for the alleged overcharges, *i.e.*, the difference between the price it charged for crude oil and the ceiling price. After more than a decade of litigation, the District Court entered judgement against the Citronelle entities and Chamberlain personally for $6,769,956.76 plus interest.[3] See March 17 Order. On January 7, 1991, the judgement was extended to Douglas Oil Purchasing Co., Inc., which is entirely owned by Chamberlain. The United States is now in the process of enforcing that judgement through garnishments and the sale of assets owned by the Citronelle entities, and has collected $6,541,074.87 as of April 11, 1991.

II. Jurisdiction and Authority

The Subpart V regulations set forth general guidelines which are used by OHA in formulating and implementing a plan to distribute funds received as a result of enforcement proceedings. See *Petroleum Overcharge Distribution and Restitution Act of 1986*, 15 U.S.C. 4501 *et seq.*, *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981). After reviewing the relevant litigation papers which constitute the record for this subpart V proceeding, OHA issues this Decision and Order which sets forth a plan to distribute the Citronelle overcharges to "injured persons," who in this case were certain of NEPCO's customers during the first six months of 1974. 10 CFR 205.280.

III. The Proposed Decision and Order and Analysis of Comments Received

On March 9, 1990, OHA issued a Proposed Decision and Order (PD&O) establishing tentative procedures to distribute the Citronelle overcharges. This PD&O was published in the **Federal Register** and a 30-day period was provided for the submission of comments regarding our proposed refund plan. See 55 FR 10106 (March 19, 1990). In addition, OHA mailed the PD&O to many interested parties. This generated several written comments regarding our proposed refund procedures. These comments focused primarily on three areas: the application procedures for those NEPCO customers with known purchase volumes; the records required to file a refund in this proceeding; and, the possibility of periodic future payments for valid claims as additional funds are obtained from the Citronelle entities. We will address the comments regarding these issues below.

Appendix A to the PD&O listed 19 NEPCO customers whose purchase volumes for the refund period were provided to the FEA during its audit of Citronelle. Purchases by this group account for approximately 49 percent of NEPCO's sales during the period. The PD&O stated that these firms would be required to provide the same type of information documenting their purchase volumes as other NEPCO customers in order to qualify for a refund. Three firms provided comments to OHA suggesting that the proposed procedures be amended to allow NEPCO customers listed in Appendix A, who are in agreement with the purchase volumes set forth therein, to qualify for refunds without submitting the typical month-by-month list of purchases. OHA agrees that the adoption of this revised procedure will result in a more equitable claims process. Therefore, any firm which appears in Appendix A to this Decision, and which is willing to accept the purchase volume stated, will not be required to submit any additional evidence of its purchases of NEPCO covered products.[4]

Comments were also received from several firms stating that OHA should take into account the age of this proceeding when considering the detail of records that claimants will be

[1] Under this scheme, Citronelle and PETCO attempted to bypass the mandatory pricing regulations governing the sale of domestic crude oil by labeling sales of Citronelle crude oil to PETCO "export sales."

[2] PETCO passed on the price increase to NEPCO, which, in turn, charged its customers a higher price for its refined petroleum products. Thus, NEPCO customers ultimately bore the burden of Citronelle's overcharges.

[3] See *Citronelle-Mobile Gathering, Inc.* v. *O'Leary*, 499 F. Supp. 871 (S.D. Ala. 1980), aff'd sub nom. *Citronelle-Mobile Gathering, Inc.* v. *Edwards*, 669 F. 2d 717 (Temp. Emer. Ct. App. 1982), cert. denied, 459 U.S. 877 (1982). See also *Citronelle-Mobile Gathering, Inc.* v. *Herrington*, 826 F. 2d 16 (Temp. Emer. Ct. App. 1987), cert. denied sub nom. *Chamberlain* v. *United States*, *484 U.S. 943 (1987).*

[4] A NEPCO customer appearing in appendix A may disagree with the stated purchase volume. In order for such a customer to qualify for a refund based on its NEPCO purchases in excess of the stated purchase volume, it will be required to provide a monthly schedule of its purchases for the entire refund period.

required to provide in order to obtain a refund. These commentors note the fact that all eligible purchases of NEPCO refined petroleum products took place in 1974. OHA is generally willing to accept any reasonable estimation method. The method which is most accurate for individual claimants will depend on the particular business and method of recordkeeping. A full description of any estimation technique must accompany the Application for Refund, and should include the location and types of records used to prepare the estimate. See Application Requirements *infra*.

In response to these comments, however, OHA has decided to make one amendment to the proposed refund procedures *sua sponte*. In the PD&O we proposed that under the "small claims" presumption, a refiner, reseller, or retailer seeking a refund of $5,000 or less, exclusive of interest, will not be required to submit evidence of injury beyond documentation of the volume of NEPCO products it purchased during the period of overcharges. In order to reduce the burden on smaller claimants, and in view of the relatively large volumetric refund, we have decided to raise the limit of the small claims presumption to $10,000. See *Texcao Inc.*, 20 DOE ¶ 85,147, at 88,320 (1990); see also Refund Procedures *infra*.

Two commentors also suggested that the final refund procedures should provide for an immediate payment to each claimant deemed eligible for a refund, out of the funds already collected from the Citronelle entities, and periodic distributions of any monies subsequently collected. That suggestion will not work in this case, since OHA must obtain the Court's approval before paying any refunds. OHA will wait at least 180 days after issuing this Decision, *i.e.* until the close of the period for submitting claims, to submit its report to the Court recommending the distribution of available funds. However, that report will include a request that OHA be given the authority to make future periodic payments out of additional monies obtained from the Citronelle entities.

Therefore, except for the revisions discussed, we will adopt the refund procedures of the PD&O, set forth below, in final form.

IV. The Refund Procedures

In its March 14, 1989 Report to the District Court, OHA determined that during the first six months of 1974, the cost of Citronelle crude oil, including the Citronelle overcharges, was reflected in the prices NEPCO charged to its customers. We will implement a two-stage refund process by which purchasers of NEPCO refined products during the period January through June 1974 (the refund period) may submit Applications for Refund in this initial stage, and any monies remaining after the payment of all valid first-stage claims will be distributed in accordance with the DOE's *Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges*, 51 FR 27899 (1986). From our experience with Subpart V proceedings, we expect that potential applicants generally will fall into the following categories: (1) end-users; (2) regulated entities, such as public utilities, and cooperatives; and (3) refiners, resellers, and retailers (hereinafter collectively referred to as "resellers").

A. Claims Based Upon Citronelle's Overcharges

In order to receive a refund, each claimant will be required to submit a schedule of its monthly purchases of NEPCO refined petroleum products during the refund period.[5] If the product was not purchased directly from NEPCO, the claimant must establish that the product originated with NEPCO. Additionally, a reseller claimant, except one who chooses to utilize the injury presumptions set forth below, will be required to make a detailed showing that it was injured by Citronelle's alleged overcharges. *See* Showing of Injury *infra*.

1. The Use of Presumptions

Our experience also indicates that the use of certain presumptions permits claimants to participate in the refund process without incurring inordinate expense and ensures that refund claims are evaluated in the most efficient manner possible. See, *e.g.*, *Marathon Petroleum Co.*, 14 DOE ¶ 85,269 (1986) (*Marathon*). The use of presumptions in refund cases is specifically authorized by the applicable Subpart V regulations at 10 CFR 205.282(e). Accordingly, we adopt the presumptions set forth below.

a. *Calculation of Refunds.* First, we will adopt a presumption that the alleged overcharges were dispersed equally in all of NEPCO's sales of refined petroleum products during the refund period. In accordance with this presumption, refunds are made on a per gallon or volumetric basis.[6] In the absence of better information, a volumetric refund is appropriate because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.

Under the volumetric approach, a claimant's "allocable share" of the overcharge fund is equal to the number of gallons purchased from NEPCO during the refund period multiplied by the per gallon refund amount. In the present case, the per gallon refund amount is $.0029, exclusive of interest. We derived this figure by dividing the principal amount of the Citronelle overcharges, $6,769,956.76, by 2,323,649,160 gallons (55,324,980 barrels), the approximate number of gallons of covered refined products which NEPCO sold from January through June 1974. A firm that establishes its eligibility for a refund will receive all or a portion of its allocable share of principal. To further our goal of restitution to injured parties, each claimant will also receive interest to the extent that sufficient funds are collected. As noted in section V *infra*, each successful claimant will receive a *pro rata* share if the sum of valid claims exceeds the amount collected.[7]

In addition to the volumetric presumption, we will adopt a number of presumptions regarding injury for claimants in each category listed below

a. *End-Users.* The first presumption will be that an end-user or ultimate consumer of NEPCO petroleum products whose business is unrelated to the petroleum industry was injured by payment of prices which included the Citronelle overcharges. See *Murphy Oil Corp.*, 17 DOE ¶ 85,782, at 89,471–72 (1988). Unlike regulated firms in the petroleum industry, end-users generally were not subject to price controls during the relevant time period and were not required to keep records which justified selling price increases by reference to

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[5] As we stated previously, those NEPCO customers listed in appendix A to this Decision and Order may rely on the stated purchase volumes provided to the DOE during its audit of the Citronelle entities.

[6] If an individual claimant believes that it was injured by more than its volumetric share, it may elect to forego this presumption and file a refund application based upon a claim that it suffered a disproportionate share of the Citronelle overcharges. See, *e.g.*, *Mobil Oil Corp./Atchison, Topeka and Santa Fe Railroad Co.*, 20 DOE ¶ 85,788 (1990); *Mobil Oil Corp./Marine Corps Exchange Service*, 17 DOE ¶ 85,714 (1988). Such a claim will only be granted if the claimant makes a persuasive showing that is was "overcharged" by a specific amount, and that it absorbed those overcharges. See *Panhandle Eastern Pipeline Co./Western Petroleum Co.*, 19 DOE ¶ 85,705 (1989). To the degree that a claimant makes this showing, it will receive an above-volumetric refund.

[7] As in previous cases, we will establish a minimum refund amount of $15. In this determination, any potential claimant which purchased less than 5,172 gallons of petroleum products would have an allocable share of less than $15. We have found through our experience that the cost of processing claims in which refunds for amounts less than $15 are sought outweighs the benefits of restitution in those instances. See *Exxon Corp.*, 17 DOE ¶ 85,590 at 89,150 (1988) (*Exxon*).

cost increases. Consequently, analysis of the impact of overcharges on the final prices of goods and services produced by end-users would be beyond the scope of a refund proceeding. *Id.* Therefore, end-user purchasers of NEPCO petroleum products need only document their purchase volumes from NEPCO during the period January through July of 1974 to make a sufficient showing that they were injured by the overcharges.

b. *Regulated Firms and Cooperatives.* The second presumption will be applied to claims by regulated firms. In order to receive a full refund, a claimant whose prices for goods and services is regulated by a governmental agency, *i.e.*, a public utility or an agricultural cooperative which is required by its charter to pass through cost savings to its member-purchasers, need only submit documentation of its purchase volumes. However, a regulated firm or a cooperative will also be required to certify that it will pass any refund received through to its customers or member-purchasers, provide us with a full explanation of how it plans to accomplish the restitution, and certify that it will notify the approrpiate regulatory body or membership group of its receipt of the refund. *See Marathon,* 14 DOE at 88,514–15. These requirements reflect the fact that any overcharges incurred were typically passed through by the reuglated firm or cooperative to its customers through the operation of automatic price adjustment mechanisms. Similarly, any refunds they receive should be passed through automatically to their customers. With respect to a cooperative, in general, the cooperative agreement which controls its business operations would ensure that the alleged overcharges, and similarly refunds, would be passed through to its member-purchasers. Accordingly, these firms will not be required to make a detailed demonstration of injury.[8]

c. *Refiners, Resellers, and Tetailers.* A refiner, reseller, or retailer claimant had an opportunity under DOE regulations in effect at the time to pass through the Citronelle overcharges to its customers and will therefore be required to make a detailed showing that it was injured by the overcharges, unless it chooses to rely on either the "small claims" or "mid-level claims" presumption decribed below.

i. Showing of Injury—This showing will generally consist of two distinct elements. First, a reseller claimant will be required to show that it had "banks" of unrecouped increased product costs in excess of the refund claimed.[9] Second, because a showing of banked costs alone is not sufficient to establish injury, a claimant must provide evidence that market conditions precluded it from increasing its prices to pass through the additional costs associated with the alleged overcharges. See *National Helium Corp./Atlantic Richfield Co.*, 11 DOE ¶ 85,257 (1984), *aff'd sub nom. Atlantic Richfield Co.* v. *DOE*, 618 F. Supp. 1199 (D. Del. 1985). Such a showing could consist of a demonstration that a firm suffered a competitive disadvantage as a result of its purchases from NEPCO. *Id.; Sid Richardson Carbon & Gasoline Co./ Shupbach & Streitmatter Gas Co.*, 14 DOE ¶ 85.186 (1986).

ii. Small Claims Presumption—We will adopt a "small claims" presumption that a firm which resold NEPCO products and requests a small refund was injured by the Citronelle overcharges. Under the small claims presumption, a refiner, reseller, or retailer seeking a refund of $10,000 [10] or less, exclusive of interest, *i.e.*, claimants who purchased 3,448,276 gallons or less, will not be required to submit evidence of injury beyond documentation of the volume of NEPCO products it purchased during the period of overcharges. See *Texaco Inc.*, 20 DOE ¶ 85,147, at 88,320 (1990). This presumption is based on the fact that there may be considerable expense involved in gathering the types of data necessary to support a detailed claim of injury; for small claims the expense might possibly exceed the potential refund. Consequently, failure to allow simplified refund procedures for small claims could deprive injured parties of their opportunity to obtain a refund.

iii. Mid-Level Claims Presumption—In addition, a refiner, reseller, or retailer claimant whose allocable share of the refund pool exceeds $10,000, excluding interest, may elect to receive as its refund the larger of $10,000 or 40 percent of its allocable share, up to $50,000, *i.e.*, claimants who purchased between 3,448,276 gallons and 43,103,448 gallons of NEPCO refined petroleum products during the period of overcharges may elect to utilize this presumption Claimants who purchased more than 43,103,448 gallons may elect to limit their claims to $50,000. The use of this presumption reflects our conviction that these larger, mid-level claimants were likely to have experienced some injury as a result of the overcharges. See *Marathon*, 14 DOE at 88,515. In some prior special refund proceedings, we have performed detailed analyses in order to determine product-specific levels of injury. See *e.g., Getty Oil Co.*, 15 DOE ¶ 85,064 (1986). However, in *gulf Oil Corp.*, 16 DOE ¶ 85,381, at 88,737 (1987), we determined that based upon the available data, it was more accurate and efficient to adopt a single presumptive level of injury for all mid-level claimants, regardless of the refined product that they purchased, based upon the results of our analyses in prior proceedings. We believe that approach generally to be sound, and we therefore will adopt a 40 percent presumptive level of injury for all mid-level claimants in this proceeding. Consequently, an applicant in this group will only be required to provide documentation of its purchase volumes of NEPCP refined petroleum products during the refund period in order to be eligible to receive a refund of 40 percent of its total allocable share, up to $50,000, or $10,000, whichever is greater.[11]

3. Claims for More Than the Volumetric Amount

As noted above, certain of NEPCO's customers may attempt to submit claims for refunds in excess of the volumetric amount. Under established Subpart V caselaw, an individual claimant bears the burden of submitting detailed evidence to prove how the overcharges injured it by an amount greater than the

[8] A cooperative's purchases of NEPCO petroleum products which were resold to non-members will be treated in a manner consistent with purchases made by other resellers. See *Total Petroleum, Inc./ Farmers Petroleum Cooperative, Inc.*, 19 DOE¶ 85.215 (1989).

[9] Claimants who have previously relied upn their banked costs in order to obtain refunds in other special refund proceedings should subtract those refunds from the cumulative banked costs submitted in this proceeding. See *Husky Oil Co./Metro Oil Products, Inc.*, 16 DOE ¶ 85,090, at 88,179 (1987). Additionally, a claimant attempting to show injury may not receive a refund for any month in which it has a negative cumulative bank (for that product) or for any prior month. See *Standard Oil Co. (Indiana)/Suburban Propane Gas Corp.*, 13 DOE ¶ 85.030 at 88.082 (1985). If a claimant no longer has records showing its banked costs, OHA may exercise its discretion to allow the claimant to approximate those cost banks. See *e.g., Gulf Oil Corp./Sturdy Oil Co.*, 15 DOE ¶ 85.187 (1986).

[10] In our proposed Decision and Order, issued March 9, 1990, OHA stated that the small claims presumption limit would be set at $5,000. We have determined that increasing that limit to $10,000 would be more equitable to the claimants in this proceeding.

[11] A claimant who attempts to make a detailed showing of injury in order to obtain 100 percent of its allocable share but, instead, provides evidence that leads us to conclude that it passed through all of the alleged overcharges, or that it is eligible for a refund of less than the applicable presumption-level refund may not then be eligible for a presumption-based refund. Instead, such a claimant may receive a refund which reflects the level of injury established in its application. No refund will be approved it its submission indicates that it was not injured as a result of its purchases from Citronelle. See *Exxon*, 17 DOE at 89,150 n.10.

generally applicable, per-gallon volumetric level. See *Texaco Inc.*, 20 DOE ¶ 85,147 (1990); *Mobile Oil Corp./ Marine Corps Exchange Serv.*, 17 DOE ¶ 85,714, at 89,359 (1988), and cases cited therein.

A claimant may use either the volumetric method or an alternative method to attempt to prove the amount of its injury. However, a claimant may use only one method for the entire overcharge period.

B. Refund Application Requirements

To apply for a refund from the Citronelle overcharge fund, a claimant should submit an Application for Refund containing all of the following information:

(1) Identifying information including the claimant's name, address, social security number or employer identification number, an indication whether the claimant is a corporation, the name, title, and telephone number of a person to contact for any additional information, and the name and address of the person who should receive any refund check;

(2) The applicant's use(s) of the NEPCO petroleum products: e.g., retail gasoline station, petroleum jobber, petroleum refiner, consumer (end-user), cooperative, or public utility;

(3) A schedule showing covered products purchased from NEPCO during the period January through July 1974.[12] The applicant should specify the source of this gallonage information. In calculating its purchase volumes, an applicant should use actual records from the refund period, if available. If these records are not available, the applicant may submit estimates of its petroleum purchases, but the estimation methodology must be reasonable and must be explained in detail;

(4) If the applicant was an indirect purchaser from NEPCO (*e.g.*, it purchased NEPCO petroleum products through another supplier), it should submit the name, address, and telephone number of its immediate supplier and should specify why it believes that the petroleum products claimed were originally sold by NEPCO;

(5) If the applicant is a regulated utility or a cooperative, certifications that it will pass on the entirety of any refund received to its customers, will notify its state utility commission, other regulatory agency, or membership body of the receipt of any refund, and a brief description as to how the refund will be passed along;

(6) If the applicant is a retailer, reseller, or refiner whose allocable share exceeds $10,000 (*i.e.*, whose purchases equal or exceed 3,448,276 gallons), it must indicate whether it elects to rely on the appropriate reseller injury presumption and receive the larger of $10,000 or 40% of its allocable share. If it does not elect to rely on the injury presumption, it must submit a detailed showing that it absorbed Citronelle's overcharges. See section IV.A.1.c.i. *supra*;

(7) A statement as to whether the applicant or a related firm has filed, or has authorized any individual to file on its behalf, any other application in the Citronelle refund proceeding. If so, an explanation of the circumstances of the other filing or authorization should be submitted;

(8) If the applicant is or was partially or entirely owned by Citronelle or NEPCO, it should explain this affiliation, including the years in which it was affiliated with Citronelle or NEPCO;[13]

(9) A statement as to whether the ownership of the applicant a firm changed during or since the refund period. If an ownership change occurred, the applicant should list the names, addresses, and telephone numbers of any prior or subsequent owners. The applicant should also provide copies of any relevant Purchase and Sale Agreements, if available. If such written documents are not available, the applicant should submit a description of the ownership change, including the year of the sale and the type of sale (*e.g.*, sale of corporate stock, sale of company assets);

(10) A statement as to whether the applicant has ever been a party in a DOE enforcement action or a private Section 210 action. If so, an explanation should also be provided;

(11) The statement listed below signed by the individual applicant or a responsible official of the company filing the refund application:

> I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicated of this entire application which will be placed in OHA Public Reference Room.

All applications should be either typed or printed and clearly labeled "Citronelle Special Refund Proceeding, Case No. KEF–0139." Each applicant must submit an original and one copy of the application. If the applicant believes that any of the information in its application is confidential and does not wish for this information to be publicly disclosed, it must submit an original application, clearly designated "confidential," containing the confidential information, and two copies of the application with the confidential information deleted. All refund applications should be postmarked no later than November 15, 1991, and sent to: Citronelle Special Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

V. Proration of Refunds or Distribution of Unclaimed Funds

It is possible that the sum of valid claims submitted and ultimately approved by the Court will not match the amount of the Citronelle overcharges the Government will be able to collect. In the event that the approved claims exceed the amount recovered, each claimant will receive a *pro rata* share of the amount recovered.

If the amount recovered exceeds the sum of approved claims, OHA recommends taht any Citronelle overcharge funds that remain after all valid refund claims have been calculated and paid in accordance with these refund procedures be distributed in accordance with the DOE's *Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges*, 51 FR. 27899 (1986). That policy adopts Paragraph IV.B.2 of the Stripper Well Settlement Agreement. It specifies that fifty percent of any unclaimed funds will be distributed to the states and territories in proportion to their consumption of refined products during the period of price controls as set forth in Exhibit H to the Settlement Agreement, to be used and administered in accordance with the Agreement, and fifty percent will be distributed to the DOE for the Federal Government.

VI. Identification of Claimants

OHA has identified three groups of persons who may have been injured by overcharges on the Citronelle crude oil that were passed through to purchasers

[12] As we stated previously, those NEPCO customers listed in appendix A to this Decision and Order may relay on the stated purchase volumes provided to the DOE during its audit of the Citronelle entities.

[13] As in other refund proceedings involving alleged refined product violations, OHA will presume that affiliates or subsidiaries of Citronelle or NEPCO were not injured by Citronelle's alleged overcharges. See, *e.g.*, *Marathon Petroleum Co./ EMRO Propane Co.*, 15 DOE ¶ 85,228 (1987).

of NEPCO's products.[14] The first group consists of NEPCO customers for whom purchase volume information is available. OHA has made a preliminary estimate of the amount of the refund, plus interest, that each member of this group may receive if that party satisfies the requirement for a refund set forth above. (See appendix A) Purchases by this group account for approximately 49 percent of NEPCO's sales during the period.

The second group consists of additional NEPCO customers that OHA has identified, but for whom no purchase volume information is presently available. (See Appendix B) Since refund amounts will be determined based on purchase volumes, we are presently unable to estimate the amount of the refunds claimants in this group will receive.

The third group of potential Citronelle refund recipients consists of NEPCO customers during the period of overcharges who have not yet been identified and whose purchase volumes are also unknown. For example, the record indicates that there were additional sales by NEPCO of naphtha and kerosene during the relevant period. However, there is no information currently known to OHA identifying the purchasers of those products. The information shows only that these products were sold to refiners, either small independents or major integrated oil companies.

It is Therefore Ordered That:

(1) Applications for refined product refunds from funds remitted to the Department of Energy pursuant to the March 17, 1988 Order of the U.S. District Court for the Southern District of Alabama may now be filed.

(2) Applications for Refund must be postmarked no later than November 15, 1991.

Dated: April 26, 1961.

George B. Breznay,

Director, Office of Hearings and Appeals.

[14] OHA has attempted to identify all NEPCO customers who were injured by the Citronele overcharges. In addition to publishing this Decision in the **Federal Register** we are forwarding by direct mail a copy to most of the NEPCO customers included on the customer lists NEPCO produced in the Citronelle litigation. However, we have found that the NEPCO customer lists contain some names which are illegible; in addition, the lists do not include the complete address for each customer. We have attempted to find current addresses for these potential claimants. Since NEPCO's customers are principally found in New York, New Jersey, Florida, and the New England area, we will send a press release and copy of this Decision to newspapers in the former NEPCO market area. We will also send copies of the press release and Decision to several oil industry trade journals. [See appendix C for list of publications.]

Appendix A—NEPCO Customers With Known Purchase Volumes

Name of firm	Purchases (barrels)	Purchases (gallons)	Principal refund amount
Alfa Port [1]	168,100	7,060,200	$20,475
Agway, Inc., 333 Butternut Drive, Syracuse, NY 13214	20,100	844,200	2,448
Conoco, Box 2197, Houston, TX 77252	434,500	18,249,000	52,922
Consolidated Edison Co., Attn: Donal F. McCarthy, 4 Irving Place, New York, NY 10003	6,312,500	265,125,000	768,863
Fort Pierce [2]	217,400	9,130,800	26,479
General Motors Corp., 767 Fifth Avenue, New York, NY 10153	85,800	3,603,600	10,450
Georgia Power Co., c/o Robert P. Williams II, Troutman, Sanders, Lockerman & Ashmore, Suite 1400, 127 Peachtree Street, NE., Atlanta, GA 30303	724,200	30,416,400	88,208
Howard [3]	184,900	7,765,800	22,521
Hudson [4]	214,900	9,025,800	26,175
Long Island Lighting Co., Attn: Elizabeth Biging, 175 E. Old Country Road, Hicksville, NY 11801	10,860,300	456,132,600	1,322,785
Mobil Oil Corp., Attn: W.C. Streets, 3225 Gallows Road, Fairfax, VA 22037	72,800	3,057,600	8,867
Niagara [5]	4,163,300	174,858,600	507,090
Orange [6]	317,700	13,343,400	38,696
Orlando [7]	2,193,600	92,131,200	267,180
Patchogue [8]	120,000	5,040,000	14,616
Philadelphia Electric Co., Attn: W.J. Lenard, 2301 Market Street (S18-3), Philadelphia, PA 19101	337,400	14,170,800	41,095
Shell Oil Co., 900 Louisiana Street, Houston, TX 77002	197,700	8,303,400	24,080
U Western [9]	142,800	5,997,600	17,393
Westfuel [10]	443,300	18,618,600	53,994
Totals	27,211,300	1,142,874,600	3,314,337

[1] OHA has been unable to determine the actual name and/or address of certain NEPCO customers. This note, and those that follow, identify one or more companies whose names bear some resemblance to the names on NEPCO's abbreviated customer list. We are forwarding by direct mail a copy of the Proposed Decision and Order to these companies. OHA has identified two companies whose names resemble "Alfa Port": Alpha Portland Indstries, Inc., 15 S. Third Street, Easton, PA 18042; and Alpha Portland Cement, P.O. Box 20140, St. Louis, MO 63123.

[2] OHA has tentatively identified "Fort Pierce" as Fort Pierce Gas, 601 N. Fourth, Fort Pierce, FL 33450.

[3] OHA has tentatively identified "Howard" as Howard Oil Co., Inc., 48-02 54th Avenue, Maspeth, NY 11378.

[4] OHA has identified two companies whose names resemble "Hudson": Hudson General Corp., 111 Great Neck Road, Great Neck, NY 11022; and Hudson General Corp., 300 Terminal Drive, Fort Lauderdale, FL 33315.

[5] OHA has tentatively identified "Niagara" as Niagara Mohawk Power Corp., 300 Erie Boulevard W, Syracuse, NY 13202.

[6] OHA has tentatively identified "Orange" as Orange & Rockland Utils., 75 W. Rt. 59, Spring Valley, NY 10977.

[7] OHA has tentatively identified "Orlando" as Orlando Utils. Comm'n Co., Attn: John Hearn, 500 South Orange Avenue, Orlando, FL 32801.

[8] OHA has tentatively identified "Patchogue" as Patchogue Advance, 20 Medford Avenue, Patchogue, NY 11772.

[9] OHA has tentatively identified "U Western" as United Western Energy, 201 Northeast Expressway, Oklahoma City, OK 73105.

[10] OHA has tentatively identified "Westfuel" as Western Fuels, 5635 E. Powhattan Avenue, Tampa, FL 33601.

Appendix B—NEPCO Customers for Whom No Purchase Volume Information Is Presently Available

Firms With Known Addresses

Acushnet Company, Mr. Frederick H. Wendling, Purchasing Manager, P.O. Box E916, New Bedford, MA 02742-0916

Allied Chemical Corp., Allied Signal, Inc., G. Cooper, P.O. Box 057R, Morristown, NJ 07960

American Biltrite Rubber, 57 River St., Wellesley Hills, MA 02181

American Cyanamid Co., One Cyanamid Plaza, Wayne, NJ 07470

Anheuser-Busch, Inc., Mr. Patrick T. Dermody, Manager, Plant Procurement/Material Control, 200 U.S. Highway 1, Newark, NJ 07101-0879

Arkwright Finishing Co., Division of United Merchants and Manufacturers, Inc., Mr. Michael Harris, 1407 Broadway, New York, NY 10018

Arsynco, Inc., Aceto Chemical Co., Inc., 126–02 Northern Blvd., Flushing, NY 11368
Ashworth Bros., Inc., P.O. Box 670, Fall River, MA 02724
Atlas Tack Corp., Pleasant Road, Fairhaven, MA 02719
Berkeley Chemical [1]
Blakely Laundry, 156 Brunswick Avenue, Trenton, NJ 08618
Cavallaro Bros. Inc.[2]
Celanese Coatings Co., One Riverfront Plaza, Louisville, KY 40201
CF & I Steel Corp., 300 Park Avenue, New York, NY 10022
Champale, Inc., 1024 Lamberton Street, Trenton, NJ 08611
Cornell Dubilier Electronics, Mr. Charles Peruzzi, Wayne Interchange Plaza I, Wayne, NJ 07470
CPS Chemical Company, P.O. Box 162, Old Bridge, NJ 08857
Cranston Street Armory, Dexter and Parade Streets, Providence, RI 02909
D & S Processing Co., P.O. Box 175, Yarmouth, ME 04096
Dartmouth High School, Lebanon Road, Hanover, NH 03755
Dartmouth Middle School, Reservoir Road, Hanover, NH 03755
Davis Mills, Division of United Merchants and Manufacturers, Inc., Mr. Michael Harris, 1407 Broadway, New York, NY 10018
De Laval Turbine Co., 853 Nottingham Way, Trenton, NJ 08602
Delco-Remy, Division of General Motors, Mr. David Monroe, P.O. Box 2439, Anderson, IN 46011
Paul A. Dever State School, 1380 Bay Street, P.O. Box 631, Taunton, MA 02780
Duro Finishing Corp., Duro Industries, Inc., Mr. Louis D'Amico, 110 Chace Street, Fall River, MA 02724
East Providence High School, 80 Burnside Ave., Providence, RI 02915
Elbe File & Binder [3]
Essex Chemical Corp., 1401 Broad St., Clifton, NJ 07015
Express Container, Mr. Brian Mazal, 105 Avenue L, Newark, NJ 07105
F____ st Brewing Co.[4]
Fabricolor Manufacturing Corp., 24½ Van Houten St., Paterson, NJ 07502
Fall River Housing [5]
Fall River Knitting Mills, 69 Alden St., Fall River, MA 02723
Federal Paper Board Co., 75 Chestnut Ridge Road, Montvale, NJ 07645
F H C [6]
Franconia Fuel, Mr. John R. Nelson, 379 Main Street, Wareham, MA 02571
General Electric, Power Transformer Dep't., Mr. Raymond P. Tuggey, 100 Woodlawn Ave., Pittsfield, MA 01201
General Motors Corp., Mr. Gary Applegate, General Supervisor—Financial, 1016 W. Edgar Road, Linden, NJ 07036
General Work Clothes, 103 Old Colony, Taunton, MA 02718
Giusti Baking Co., Inc. of N.B., 1707 Purchase St., New Bedford, MA 02740
Glass Containers Corp., Cherry Street, Marienville, PA 16238
Glen Petroleum Corp., Mr. Richard Cobb, 222 Lee Burbank Highway, Revere, MA 02151
Glenbrook Laboratories, 100 Lafayette Street, Pawtucket, RI 02860
Globe Manufacturing Co., Mr. Lester Allen, P.O. Box 1751, Fall River, MA 02722
Globe Products Co., Inc., Ms. Linda Burger, 750 Bloomfield Ave., Clifton, NJ 07012
Goodall Rubber Company, A. J. Russo, P.O. Box 8237, Trenton, NJ 08650
Gray Textile, Mr. Louis E. D'Amico, 206 Globe Mills Avenue, Fall River, MA 02724
A. Gross Co., Inc.[7]
Hackensack Water Co., Ms. Maria Laurino, 200 Old Hook Rd., Harrington Park, NJ 07640
Louis Hand, Inc.[8]
H.N. Hartwell & Son, Inc., Park Square Building, Boston, MA 02116
Hatco Chemical Corp., Mr. Jeffrey G. Weiss, King George Post Road, Fords, NJ 08863
Hatfield Township, Mr. Sydney C. Brittin, Township Manager, School Road & Chestnut Street, Hatfield, PA 19440
Hathaway Oil Co., Inc., 23 State Road, N. Dartmouth, MA 02747
Hercules, Inc., Mr. Everett D. Dudley, S. Minnisink Ave., Parlin, NJ 08859
Hills Bros. Coffee Co., #2 Harrison St., San Francisco, CA 94119
Holy Name Hospital, 718 Teaneck Road, Teaneck, NJ 07666
Homasote Co., P.O. Box 7240, West Trenton, NJ 08628
Horizon House, 685 Canton, Norwood, MA 02062
Independent Laundry, 870 West Main Road, Middletown, RI 02840
Kennedy & Decker Coal Corp., 6½ Roos Ave., Chatham, MA 02633
Dr. Joseph H. Ladd School, School Land Road—Exeter, North Kingstown, RI 02852
Manufacturers Realty Corp., 18 Pocasset, Fall River, MA 02721
New Bedford Gas and Edison Light Co., 675 Massachusetts Ave., Cambridge, MA 02139
Ocean Spray Cranberries, Water St., Plymouth, MA 02360
Old Rochester Regional [9]
Parks Shellac Co. [10]
Peerless Laundry, 1668 Pleasant Street, Fall River, MA 02723
Pfizer, Inc., Mr. J. Michael Niebert, 230 Brighton Road, Clifton, NJ 07012
Plymouth Rubber Company, 104 Revere, Canton, MA 02360
Polaroid Corp., 549 Technology Square, Cambridge, MA 02139
Providence County, County Courthouse, Providence, RI 02903
Providence State House, 82 Smith Street, Providence, RI 02903
Quaker Oats, K.A. Vickroy, P.O. Box 520, Pekin, IL 61554
Quincy Plating Works [11]

[1] OHA has been unable to determine the actual name and/or address of certain NEPCO customers. This note, and those that follow, identify one or more companies whose names bear some resemblance to the names on NEPCO's abbreviated customer lists. We are forwarding by direct mail a copy of the Proposed Decision and Order to these companies. OHA has identified three companies whose names resemble "Berkeley Chemical": Berkeley Plastics & Manufacturing, 273 Snyder Avenue, Berkeley Heights, NJ 07922; Berkley Group, Inc., 3015 N. Ocean Blvd., Fort Lauderdale, FL 33308; and Berkley Holdings Corp, 165 Mason Street, Greenwich, CT 06830.

[2] OHA has tentatively identified "Cavallaro Bros., Inc." as Cavallaro Motors, 41 Clifton Avenue, Ansonia, CT 06401.

[3] OHA has tentatively identified "Elbe File & Binder" as Elbe Products, 649 Alden Street, Fall River, MA 02723.

[4] OHA has tentatively identified "F____ st Brewing Co." as Falstaff Brewing Co., S & P Company, 100 Shoreline Highway, Building B—Suite 395, Mill Valley, CA 94941.

[5] OHA has tentatively identified "Fall River Housing" as Fall River Housing Authority, P.O. Box 989, Fall River, MA 02722.

[6] OHA has tentatively identified "F H C" as FMC Corp., 200 East Randolph Street, Chicago, IL 60601.

[7] OHA has tentatively identified "A. Gross Co., Inc." as A. Gross, 652 Doremus Avenue, Newark, NJ 07105.

[8] OHA has tentatively identified "Louis Hand, Inc." as Louis Handy, 847 Pleasant Street, Fall River, MA 02732.

[9] OHA has tentatively identified "Old Rochester Regional" as Rochester Regional Hospital, P.O. Box 23239, Rochester, NY 14692.

[10] OHA has tentatively identified "Parks Shellac Co." as Parks Corp., Main Street, Somerset, MA 02726.

[11] OHA has tentatively identified "Quincy Plating Works" as Quincy Steel Casting, 128 Bay State Road, Rehoboth, MA 02769.

Reed and Barton Silver Co., Mr. Frank Souza, 144 W. Brittania St., Taunton, MA 02780
Revere Copper and Brass, Inc., Rome Div., Mr. Leonard D. Summa, P.O. Box 151, Rome, NY 13440
Rhode Island College, 600 Mt. Pleasant Ave., Providence, RI 02908
Rogers Corporation, One Technology Drive, Rogers, CT 06263
Slater Paper Box, Inc. [12]
Southeastern Mass Univ., Old Westport Road, N. Dartmouth, MA 02747
C.H. Sprague & Son Co., 375 Allens Ave., Providence, RI 02860
Stevens Realty Company, 168 Stevens, Fall River, MA 02721
Township Manager, Town of Swansea, Swansea, MA 02777
Uniroyal-Goodrich Tire Co., 600 S. Main St., Akron, OH 44318
University of Rhode Island, Purchasing Dep't., Kingston, RI 02881
Veterans Memorial Building [13]
Wampanoag Realty [14]
Washburn Wire Company, Brenco, Inc., P.O. Box 389, Petersburg, VA 23804
Whitin Machine Works [15]
Wilson Jones Co., 6150 W. Touhy Avenue, Niles, IL 60648
Witco Chemical, Ms. Rosemary J. Kaser, 155 Tice Blvd., Woodcliff Lake, NJ 07675
Xcel Plastics Corp., Daulton Place, West Peabody, MA 01962
Youngs Rubber Corp. [16]
Dr. U.E. Zambarano Memorial Hospital, Rt. 100, Wallum Lake, RI 02884

Firms with Unknown Addresses and Unknown Firms

Advance Piece Dye Works
Agawam Dyeing & Bleaching
Baker Castor Oil Co.
Bayview Realty Co.
The Beattie Mfg.
Beckwith Madison Maint.
Carlton (Carlson, Capitol ?) Hill Construction
Central Power Plant
Charles V. Chapin Hospital
Chemica-Land Corp.
Engbert Dye Co.
Faber Laundry
Globe Superior Products
Harmony Industry Realty
Lulu Realty

Appendix C—Publications To Be Notified of Citronelle Proceeding

Oil Industry Trade Journals

Inside Energy
Oil Daily
U.S. Oil Week

Newspapers

Connecticut:
Bridgeport Post
Hartford Courant
New Haven Register
Florida:
Fort Lauderdale News
Sun-Sentinel
Jacksonville Journal
Orlando Sentinel
Stuart News
Tampa Tribune
Massachusetts:
Boston Globe
Enterprise
Standard Times
New Jersey:
Newark Star Ledger
Times Newspaper
Trentonian
New York:
Long Island Newsday
New York Daily News
New York Times
Rhode Island:
Providence Evening Bulletin
Providence Journal

[FR Doc. 91-10430 Filed 5-1-91; 8:45 am]
BILLING CODE 6450-01-M

[12] OHA has identified two companies whose names resemble "Slater Paper Box, Inc.": Slater AG Manufacturing Corp., 321 1st Street, Elizabeth, NJ 07206; and Slater Dye Works Corp., 727 School Street, Pawtucket, RI 02860.

[13] OHA has tentatively identified "Veterans Memorial Building" as Veterans Memorial Auditorium, Brownell Street, Providence, RI 02903.

[14] OHA has identified two companies whose names resemble "Wampanoag Realty": Wampanoag Village Apartments, 850 Warren Avenue, East Providence, RI 02914; and Wampanoag Mall Office, 1925 Pawtucket Avenue, East Providence, RI 02914.

[15] OHA has tentatively identified "Whitin Machine Works" as Whitin Casting, Main Street, P.O. Box 300, Whitinsville, MA 01588.

[16] OHA has tentatively identified "Youngs Rubber Corp." as Young Rubber, 29 W. 471 North Aurora Road, Naperville, IL 60540.

Office of Hearings and Appeals,

Proposed Refund Procedures

AGENCY: Office of Hearings and Appeals Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of $8,907,350.36 (plus accrued interest) which was remitted by four firms: Seneca Oil Company, West Texas Marketing Corporation, Grace Petroleum Corporation and Thums Long Beach Company. The DOE has tentatively determined that funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986).

DATE AND ADDRESS: Comments must be filed in duplicate within 30 days from the date of publication of this notice in the **Federal Register** and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to the applicable Case Number(s): LEF-0025 (Seneca); LEF-0026 (West Texas); LEF-0027 (Grace); and/or LEF-0028 (Thums).

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2390.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute funds obtained from Seneca Oil Company, West Texas Marketing Corporation, Grace Petroleum Corporation and Thums Long Beach Company. The funds are being held in interest-bearing escrow accounts pending distribution by the DOE.

The DOE has tentatively determined to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986). Under the Modified Policy, crude oil overcharge monies are divided among the states, the federal government, and injured purchasers of refined products. Under the plan we are proposing, refunds to the states would be distributed in proportion to each state's consumption of petroleum products during the period of price controls. Refunds to eligible purchasers would be based on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate injury.

Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to provide two copies of their submissions. Comments must be submitted within 30 days of publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1

p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: April 26, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

April 26, 1991.

Proposed Decision and Order—Implementation of Special Refund Procedures

Names of Firms: Seneca Oil Company, West Texas Marketing Corporation, Grace Petroleum Corporation, Thums Long Beach Company.

Date of Filing: March 5, 1991.

Case Numbers: LEF-0025, LEF-0026, LEF-0027, LEF-0028.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) of the DOE may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

On March 5, 1991, the ERA filed petitions for the Implementation of Special Refund Procedures for the distribution of funds which the DOE has obtained from Seneca Oil Company (Seneca), West Texas Marketing Corporation (West Texas), Grace Petroleum Corporation (Grace) and Thums Long Beach Company (Thums). These four firms remitted a total of $8,907,350.36 to the DOE,[1] which deposited the funds in interest-bearing escrow accounts maintained at the Department of the Treasury. The funds paid by Seneca, West Texas and Grace were in settlement of enforcement proceedings brought by the ERA which alleged that the firms had violated the DOE regulations regarding the production or resale of crude oil. The funds received from Thums represent revenues that exceeded recoupable allowed expenses for projects qualifying under the Tertiary Incentive Program, 10 CFR 212.78.[2] An additional $371,192.71 has accrued in interest on these four escrow accounts as of March 31, 1991.[3] This Proposed Decision and Order sets forth the OHA's tentative plan to distribute these funds.

The procedural regulations of the DOE establish general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR part 205, subpart V. The subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive.[4] After reviewing the record in the present cases, we have concluded that a subpart V proceeding is an appropriate mechanism for distributing the four remittances. Therefore, we propose to grant the ERA's petitions and assume jurisdiction over distribution of the funds.

I. Background

On July 28, 1986, the DOE issued a Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) (MSRP). The MSRP, issued as a result of a court-approved Settlement Agreement in In re: The Department of Energy Stripper Well Exemption Litigation, M.D.L. No. 378 (D. Kan. 1986), provides that crude oil overcharge funds will be divided among the states, the federal government, and injured purchasers of refined petroleum products. Under the MSRP, up to 20 percent of these crude oil overcharge funds will be reserved initially to satisfy valid claims by injured purchasers of petroleum products. Eighty percent of these funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect restitution.

The OHA has been applying the MSRP to all Subpart V proceedings involving alleged crude oil violations. *See* Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). That Order provided a period of 30 days for the filing of any objections to the application of the MSRP, and solicited comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings.

On April 6, 1987, the OHA issued a Notice and analyzing the numerous comments which it received in response to the August 1986 Order. 52 FR 11737 (April 10, 1987). The Notice set forth generalized procedures and provided guidance to assist claimants who wish to file refund applications for crude oil monies under the Subpart V regulations. All applicants for refunds would be required to document their purchase volumes of petroleum products during the period of price controls and to prove that they were injured by the alleged overcharges. The Notice indicated that end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to have absorbed the crude oil overcharges and need not submit any further proof of injury to receive a refund. Finally, we stated that refunds would be calculated on the basis of a per gallon refund amount derived by dividing crude oil violation amounts by the total consumption of petroleum products in the United States during the period of price controls. The numerator would include the crude oil overcharge monies that were in the DOE's escrow account at the time of the statement and a portion of the escrow funds in the M.D.L. 378 escrow at the time of the settlement.

The DOE has applied these procedures in numerous cases since the April 1987 notice, see, *e.g., Shell Oil Co.*, 17 DOE ¶85,204 (1988); *Ernest A. Allerkamp*, 17 DOE ¶85,079 (1988) *(Allerkamp)* and the procedures have been approved by the United States District Court for the District of Kansas. Various States filed a Motion with that court claiming that the OHA violated the Settlement Agreement by employing presumptions of injury for end-users and by improperly calculating the refund amount to be used in those proceedings. In denying the Motion, the court concluded that the Settlement Agreement "does not bar [the] OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." In re: The Department of Energy Stripper Well Exemption Litigation, 671 F. Supp. 1318, 1323 (D. Kan. 1987), aff'd, 857 F.2d 1481 (Temp. Emer. Ct. App. 1988). The court also held that the OHA could calculate refunds based on a portion of the M.D.L. 378 overcharges. *Id.* at 1323-24.

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[1] Seneca, a crude oil producer, remitted $1,943,945.36 (Consent Order Number 999C90019W). West Texas, a crude oil reseller, remitted $5,000,000 (Consent Order Number 650X90314W). Grace, a crude oil producer, remitted $269,098 (Consent Order Number T00T00606W). Thums, a crude oil producer remitted $1,694,307 (Consent Order Number T00T00005W).

[2] These funds represent restitution for crude oil sales made at higher prices than would otherwise have been permissible if the projects had not qualified under § 212.78. Since the effect of those higher prices was spread throughout the country, see n.5, *infra*, it is appropriate to combine these funds with crude oil overcharge funds.

[3] As of March 31, 1991, accrued interest on each of the escrow accounts is as follows: Seneca, $37,652.09; West Texas, $186,391.56; Grace $14,890.20; Thums, $132,258.86.

[4] For a more detailed discussion of subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

II. The Proposed Refund Procedures

A Refund Claims

We now propose to apply the procedures discussed in the April 1987 Notice to the crude oil Subpart V proceedings that are the subject of the present determination. As noted above, $8.907,350.36 plus interest in crude oil funds is covered by this Proposed Decision. We have decided to reserve initially the full 20 percent of these funds, or $1,781,470.07 (plus interest), for direct refunds to claimants, in order to ensure to sufficient funds will be available for refunds to injured parties. The amount of the reserve may be adjusted downward later if circumstances warrant.

The process which the OHA will use to evaluate claims for crude oil refund monies will be modeled after the process that OHA has used in Subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. See Mountain Fuel Supply Co., 14 DOE ¶85,475 (1986) (Mountain Fuel).

Applicants will be required to document their purchase volumes and to prove that they were injured as a result of the alleged violations. Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry and who were not subject to the DOE price regulations, are presumed to have absorbed rather than passed on alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond the volumes of products purchased during the period of crude oil price controls. A Tarricone, Inc., 15 DOE ¶85,495 at 88,893–96 (1987). The end-user presumption of injury may be rebutted if evidence shows that the specific end-user in question was not injured by the crude oil overcharges. Reseller and retailer claimants must submit detailed evidence of injury, and may not rely on the presumptions of injury utilizing in refund cases involving refined petroleum products. Id. They may, however, use econometric evidence of the type employed in the OHA Report on Stripper Well Oil Overcharges, 6 Fed. Energy Guidelines ¶90,507 (June 19, 1985). See Petroleum Overcharge Distribution and Restitution Act § 3003(b)(2), 15 U.S.C. 4502(b)(2). Applicants who executed and submitted a valid waiver prusuant to one of the escrows established in the Settlement Agreement have waived their rights to apply for crude oil refunds under subpart V. See Mid-America Dairymen, Inc. versus Herrington, 878 F.2d 1448 (Temp. Emer. Ct. App. 1989); accord, Boise Cascade Corp., 18 DOE ¶85,970 (1989).

Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the crude oil refund amounts involved in this determination ($8,907,350.36) by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). See *Mountain Fuel*, 104 DOE at 88,868. This approach reflects the fact that crude oil overcharges were spread equally throughout the country by the Entitlements Program, 10 CFR 211.67.[5] This yields a volumetric refund amount of $.0000044 per gallon.

As we have stated in previous decisions, a crude oil refund applicant will be required to submit only one application for crude oil overcharge funds. *Allerkamp*, 17 DOE at 88,176. Any party that has previously submitted a refund application in the crude oil refund proceedings need not file another application. The deadline for filing an application for refund for crude oil implementation orders issued since January 18, 1991 is June 30, 1992. *Quintana Energy Corp.*, 21 DOE ¶ 85,032 (1991). It is the policy of the DOE to pay all crude oil refund claims filed before June 30, 1992, at the rate of $.0008 per gallon. However, while we anticipate that applicants which filed their claims by June 30, 1988 will receive a supplemental refund payment, we will decide in the future whether claimants that filed later Applications should receive additional refunds.

B. Payments to the States and Federal Government

Under the terms of the MSRP, we propose that 80 percent of the alleged crude oil violation amounts subject to this Proposed Decision, or $7,125,880.29, plus interest, should be disbursed in equal shares to the states and federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Settlement Agreement. These funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Settlement Agreement.

Before taking the actions we have proposed in this Decision, we intend to publicize our proposal and solicit comments on it. Comments regarding the tentative distribution process set forth in this Proposed Decision and Order should be filed with the OHA within 30 days of its publication in the Federal Register.

It Is Therefore Ordered That: The refund remitted to the Department of Energy by Seneca Oil Company, West Texas Marketing Corporation, Grace Petroleum Corporation and Thums Long Beach Company pursuant to Consent Orders 999C90019W, 650X90314W, T00T00006W and T00T00005W shall be distributed in accordance with the foregoing Decision.

[FR Doc. 91–10431 Filed 5–1–91; 8:45 am]

BILLING CODE 6450–01–M

[5] The DOE established the Entitlements Program to equalize access to the benefits of crude oil price controls among all domestic refiners and their downstream customers. To accomplish this goal, refiners were required to make transfer payments among themselves through the purchase and sale of "entitlements." This balancing mechanism had the effect of evenly dispersing overcharges resulting from crude oil miscertifications throughout the domestic refining industry. See *Amber Refining Inc.*, 13 DOE ¶ 85,217 at 88,564 (1985).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3953–1]

Great Lakes National Program Office; Sediment Remediation Technologies Selection

AGENCY: USEPA, Great Lakes National Program Office.

ACTION: Notice.

SUMMARY: The Great Lakes National Program Office announces its selection of preferred sediment remediation technologies for Pilot Demonstrations at five Assessment and Remediation of Contaminated Sediments (ARCS) sites. In accordance with section 102(B)(ii) of the Great Lakes Critical Programs Act (Act) of 1990, the U.S. Environmental Protection Agency (U.S. EPA) is announcing the selection of treatment technologies and demonstration project locations required under the Act. The work will be conducted by the Great Lakes National Program Office, under the Assessment and Remediation of Contaminated Sediments (ARCS) program. Attached is a brief description of the technologies selected and the associated sites for the demonstration projects.

FOR FURTHER INFORMATION CONTACT: Christopher Gundler, Director, Great Lakes National Program Office (312) 353–2117.

SUPPLEMENTARY INFORMATION: Pilot scale demonstrations of treatment technologies will be conducted at five

sites during Fiscal Years 1991 and 1992. These sites are: Ashtabula River, Ohio; Buffalo River, New York, Grand Calumet River, Indiana; Saginaw River, Michigan; and, Sheboygan River, Wisconsin.

The U.S. EPA has screened available technologies and has selected the most promising ones, based upon the contaminants present and their concentrations. The technologies selected for the pilot scale demonstrations are now being conducted on a very small scale in a variety of laboratories. The field demonstrations will focus on processes that may be scaled up for an actual clean up of a site. Pilot demonstrations will begin this summer and will be completed in 1992. Extensive monitoring will be part of the demonstrations in order to determine the effectiveness of each process. A final report of our findings will be available in 1993.

The Act also calls for the specification of the "numerical standard of protection intended to be achieved at each location." The U.S. EPA currently has a significant national effort underway to develop sediment quality criteria, which entails a considerable amount of research. Our approach to demonstrating available treatment options is to use the best available technology that can be applied to contaminated sediment in the Great Lakes. When sediment quality criteria are promulgated, we will then be able to compare the results achieved with these criteria.

The following are the pilot demonstration technologies selected for each ARCS site.

Ashtabula River: ARCS will conduct a pilot demonstration of a low temperature thermal stripping process, to extract organic contaminants from the sediments. This process is a thermal desorption process that removes semivolatile organic contaminants (such as polynuclear aromatic hydrocarbons, or PAHs) by heating the sediments to temperatures lower than those used in the destructive incineration process.

Buffalo River: ARCS will conduct a pilot demonstration of a low temperature thermal extraction process, to extract organic contaminants from the sediment. This process, like the low temperature thermal striping process, is a thermal desorption process that removes semivolatile organic contaminants (such as polynuclear aromatic hydrocarbons, or PAHs) from sediments. Organic contaminants are removed from sediments by heating sediments to temperatures high enough to volatilize the contaminants, but lower than those used in the destructive incineration process.

Grand Calumet River/Indiana Harbor Canal: ARCS will conduct a pilot demonstration applying solvent extraction to contaminated sediments. This process involves exposing the sediment to a particular solvent that will separate the organic contaminants from the sediment.

Saginaw River: ARCS will conduct a particle size separation pilot demonstration, using hydrocyclone or another physical separation technology. This technology is expected to result in a reduction in volume of the heavily contaminated sediment fraction. This heavily contaminated sediment fraction will then undergo a solvent extraction process, to remove organic contaminants from the sediment. This heavily contaminated fraction will also be subjected to a bioremediation demonstration.

Sheboygan River: ARCS will provide technical support and assistance to the Superfund efforts currently underway at Sheboygan, Wisconsin, through USEPA's Environmental Research Laboratory in Athens, Georgia. Technical support will involve a scientific review of the Sheboygan bioremediation pilot project already underway, including recommendations for enhancing the experimental design of the project, and the sampling required to achieve a statistically supportable documentation of its effectiveness.

Chris Grundler,

Director, GLNPO.

[FR Doc. 91-10418 Filed 5-1-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3952-8]

Workshop on a Framework for Ecological Risk Assessment

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: This notice announces a workshop sponsored by the Environmental Protection Agency's (EPA) Risk Assessment Forum to obtain scientific peer review of an EPA report that describes general principles for ecological risk (ecorisk) assessment. The meeting will be held at the Sheraton Potomac, 3 Research Court, Rockville, MD.

DATES: The workshop will begin on Tuesday, May 14, 1991 at 8:30 a.m. and end on Thursday, May 16, at 12 noon. Members of the public may attend as observers.

ADDRESSES: Eastern Research Group, Inc., an EPA contractor, is providing logistical support for the workshop. To attend the workshop as an observer, call Eastern Research Group at (617) 641-5372 or contact Susan Brager, Eastern Research Group, 6 Whittemore Street, Arlington, Massachusetts, 02174, telephone (617) 641-5347. Space is limited.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Thomas, U.S. Environmental Protection Agency, (RD-689), 401 M Street, SW., Washington, DC, 20460, Telephone (202) 475-6743 (FTS: 475-6743).

SUPPLEMENTARY INFORMATION: EPA is presently developing ecological risk (ecorisk) assessment guidelines. The first guideline that has been prepared proposes general principles for EPA ecorisk assessment and provides a "framework" for conducting such evaluations.

To provide a scientific peer review of this framework document, EPA's Risk Assessment Form has organized a workshop of approximately 22 experts in areas relevant to ecorisk assessment. The workshop will be organized around the major sections of the document, including:

- A proposed paradigm for ecorisk assessment,
- Procedures for planning an ecorisk assessment,
- Hazard assessment, which includes both hazard identification and stressor-response analysis,
- Exposure assessment, and
- Risk characterization.

The framework document will promote consistent Agency approaches to ecorisk assessments, identify issues and research needs, and aid in the subsequent development of future ecorisk guidelines. A proposal for public comment will appear in a future issue of the Federal Register.

Dated: April 15, 1991.

Erich Bretthauer,

Assistant Administrator for Research and Development.

[FR Doc. 91-10419 Filed 5-1-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3953-3]

Gulf of Mexico Program Citizens Advisory Committee Meeting

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of meeting of the Citizens Advisory Committee of the Gulf of Mexico Program.

SUMMARY: The Gulf of Mexico Program Citizens Advisory Committee will hold a meeting on May 15–18, 1991, at the Holiday Inn, 2400 Beach Blvd, Biloxi, MS.

FOR FURTHER INFORMATION CONTACT: Mr. William Whitson, Gulf of Mexico Program Office, Stennis Space Center, MS 39529 at (601) 688–3726, FTS 494–3726.

SUPPLEMENTARY INFORMATION: A meeting of the Citizens Advisory Committee of the Gulf of Mexico Program will be held on May 16–18, 1991 at the Holiday Inn in Biloxi, Mississippi. Agenda items will include status reports to the Committee on 1992 Year of the Gulf planning, Coastal America Budget Initiative, Boater's Pledge, Take Pride Gulfwide, Gulf Symposium '92, a briefing on the Sunbelt Caucus meeting, a status report on the Gulf of Mexico Foundation, and the current Action Plans status. The meeting is open to the public.

Joseph R. Franzmathes,

Assistant Regional Administrator for Policy and Management.

[FR Doc. 91–10420 Filed 5–1–91; 8:45 am]

BILLING CODE 6560–50–M

[FRL 3953–2]

Gulf of Mexico Program Policy Review Board Meeting

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of meeting of the Policy Review Board of the Gulf of Mexico Program.

SUMMARY: The Gulf of Mexico Program Policy Review Board will hold a meeting on Wednesday, May 29, 1991, at the Tampa Airport Marriott Hotel, Tampa International Airport, Tampa, Florida.

FOR FURTHER INFORMATION CONTACT: Mr. William Whitson, Gulf of Mexico Program Office, Building 1103, John C. Stennis Space Center, Stennis Space Center, MS 39529–6000, at (601) 688–3726, FTS 494–3726.

SUPPLEMENTARY INFORMATION: A meeting of the Policy Review Board (PRB) of the Gulf of Mexico Program will be held on May 29, 1991 at the Tampa Marriott Hotel in Tampa, Florida starting at 8:30 a.m. and ending at 2:30 p.m. Agenda items will include reports to the Committee on 1992 Year of the Gulf planning, future PRB meeting schedules, PRB membership, the Mobile Bay Demonstration Project, a briefing on the Sunbelt Caucus meeting, status, report on the Gulf of Mexico Foundation, and current Action Plans status. The meeting is open to the public.

Joseph R. Franzmathes,

Assistant Regional Administrator for Policy and Management.

[FR Doc. 91–10421 Filed 5–1–91; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–44568; FRL 3891–7]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on isopropanol (CAS No. 67–63–0), submitted pursuant to a final test rule. Test data was also received on octamethylcyclotetrasiloxane (OMCTS) (CAS No. 556–57–2), submitted pursuant to a consent order. All test data were submitted under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received. Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that results of testing conducted pursuant to these testing consent orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for isopropanol were submitted by the Chemical Manufacturers Association Isopropanol Panel on behalf of the test sponsors and pursuant to a test rule at 40 CFR 799.2325. They were received by EPA on February 27, 1991. The submissions describe a 2–week repeated dose limb grip strength validation study with acrylamide in rats, and a 2–week repeated dose functional observational battery validation study with acrylamide and iminodipropionitrile in rats. Neurotoxicity testing is required by this test rule. This chemical is used as a solvent in consumer products and industrial products.

Test data for OMCTS were submitted by the Silicones Health Council on behalf of the SHC member companies that sponsored the studies, and pursuant to a consent order at 40 CFR 799.5000. They were received by EPA on April 10, 1991. The submissions describe a subchronic toxicity to midge larvae chironomus tentans under flow-through conditions. Environmental effects testing is required by this consent order. This chemical is used primarily as an intermediate in the production of polydimethylsiloxane.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS–44568). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, rm. NE–G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: April 23, 1991.

Charles M. Auer,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 91–10422 Filed 5–1–91; 8:45 am]

BILLING CODE 6560–50–F

[OPTS–59907; FRL 3893–5]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule

which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 8 such PMN(s) and provides a summary of each.

DATES: Close of review periods:

Y 91–127, April 22, 1991.
Y 91–129, 91–130, April 24, 1991.
Y 91–133, April 28, 1991.
Y 91–134, April 29, 1991.
Y 91–135, May 7, 1991.
Y 91–136, May 2, 1991.
Y 91–137, May 6, 1991.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office, NE–G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

Y 91–127

Manufacturer. Confidential.
Chemical. (G) Hydroxyl terminated, linear saturated polyester.
Use/Production. (G) Component of a formulated adhesive. Prod. range: Confidential.

Y 91–129

Manufacturer. Confidential.
Chemical. (G) Norbornene polymer derivative.
Use/Production. (G) Resin for injection and extrusion molding. Prod. range: Confidential.
Toxicity Data. Mutagenicity: negative.

Y 91–130

Manufacturer. Confidential.
Chemical. (G) Acrylic acid, acrylate copolymer.
Use/Production. (G) Processing and for surfactant system. Prod. range: Confidential.
Toxicity Data. Mutagenicity: negative. Skin sensitization: negative species (guinea pig).

Y 91–133

Manufacturer. Moore Business Forms, Inc.
Chemical. (G) Polysisoprene Cis-1,4 grafted with methyl methacrylate and styrene.
Use/Production. (S) Paper adhesive component. Prod. range: 11,000–18,600 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 > g/kg species (rat). Eye irritation: none species (rabbit). Skin sensitization: negligible species (rabbit).

Y 91–134

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Amine reacted polymer of an aliphatic isocyanate with a polycaprolactone diol.
Use/Production. (G) A polyurethane elastomer to be used in an open nondispersive manner. Prod. range: Confidential.

Y 91–135

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Amine reacted polymer of aliphatic isocyanate with polyester diol.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

Y 91–136

Importer. Powdertech Corporation.
Chemical. (G) Alkyd resin, polymer.
Use/Import. (G) Open, nondispersed. Import range: 1,500–2,000 kg/yr.

Y 91–137

Manufacturer. Confidential.
Chemical. (G) Modified vegetable oil.
Use/Production. (G) Coating. Prod. range: Confidential.

Dated: April 25, 1991.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 91–10423 Filed 5–1–91; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1844]

Petitions for Reconsideration and Clarification of Actions in Rule Making Proceedings

April 26, 1991.

Petitions for reconsideration have been filed in the Commission rule making proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor Downtown Copy Center (202) 452–1422. Oppositions to these petitions must be filed May 20, 1991.

See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of parts 15 and 68 of the Commission's Rules Regarding Cordless Telephones. (Gen Docket No. 89–605, RM–6537) Number of Petitions Received: 1

Subject: Amendment of part 94 of the Commission's Rules to Permit Private Video Distribution Systems of Video Entertainment Access to the 18 GHz Band. (PR Docket No. 90–5) Number of Petitions Received: 2

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–10318 Filed 5–1–91; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Port Authority of New York & New Jersey et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200501.

Title: Port Authority of New York & New Jersey/Hapag Lloyd (America) Inc. Container Incentive Agreement.

Parties: Port Authority of New York & New Jersey (Port Authority), Hapag–Lloyd (America) Inc. (Carrier).

Synopsis: The Agreement provides for the Port Authority to pay the Carrier $25.00 per import container and $50.00 per export container with cargo loaded or unloaded from a vessel at a marine terminal in the Port of New York/New Jersey. The Carrier shall submit to the Port Authority an invoice for all containers for which it seeks payment pursuant to the terms and conditions under this agreement.

Agreement No.: 224–200360–001.
Title: South Carolina State Ports Authority/ABC Containerline Terminal Agreement.
Parties: South Carolina State Ports Authority ABC Containerline (ABC).
Synopsis: The Agreement, filed April 22, 1991, amends the parties' basic agreement to allow ABC to pay a reduced rate of $50 per empty container for 300 empty containers to be discharged from ABC vessels through October 15, 1991.

Agreement No.: 224–200506.
Title: Indiana Port Commission/Lakes and Rivers Transfer, A Division of Jack Gray Transport, Inc. Terminal Agreement.
Parties: Indiana Port Commission (Port), Lakes and Rivers Transfer, A Division of Jack Gray Transport, Inc. (L & R).
Synopsis: The Agreement, filed April 22, 1991 provides for L & R to operate and provide public services at the Port's general cargo terminal facilities at the Port of Indiana at Burns International Harbor. The Agreement's term expires December 31, 1994.

Agreement No.: 224–200503, 224–200503–001, 224–200503.002, 224–200504 and 224–200504–001.
Title: Port of Galveston/Del Monte Fresh Fruit Company Terminal Agreement.
Parties: Port of Galveston, Del Monte Fresh Fruit Company.
Synopsis: The Agreements provide for incentive rates for wharfage, dockage, truck parking, installation of reefer plugs, and preferential first call and shed space at Pier 18 at the Port of Galveston.

Agreement No.: 224–200507.
Title: Port Authority of New York & New Jersey/Bermuda Container Line, Ltd. Container Incentive Agreement.
Parties: Port Authority of New York & New Jersey (Port Authority), Bermuda Container Line, Ltd. (Carrier).
Synopsis: The Agreement provides for the Port Authority to pay the Carrier $25.00 per import container and $50.00 per export container with cargo loaded or unloaded from a vessel at a marine terminal in the Port of New York/New Jersey. The Carrier shall submit to the Port Authority an invoice for all containers for which it seeks payment pursuant to the terms and conditions under this agreement.

Agreement No.: 224–200505.
Title: State of Hawaii/Matson Terminals, Inc. Terminal Agreement.
Parties: State of Hawaii, Matson Terminals, Inc. (Matson).
Synopsis: The Agreement provides for Matson's lease of certain electrical power easements at the Container Handling Facility Kawaihae Harbor, Hawaii, Hawaii.

By Order of the Federal Maritime Commission.

Dated: April 26, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91–10312 Filed 5–1–91; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Bancorp Hawaii, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that has been determined to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 21, 1991.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Bancorp Hawaii, Inc., Honolulu, Hawaii; to engage *de novo* through its subsidiary, Bancorp Investment Group, Ltd, Honolulu, Hawaii, in providing securities brokerage services pursuant to § 225.25(b)(15); providing investment advisory services pursuant to § 225.25(b)(4); providing securities brokerage and investment advice on a combined basis to institutional and retail customers; and providing services incidental to the above.

Board of Governors of the Federal Reserve System, April 26, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–10353 Filed 5–1–91; 8:45 am]

BILLING CODE 6210–01–F

DNB Financial Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 21, 1991.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice

President) 701 East Byrd Street, Richmond, Virginia 23261:

1. DNB Financial Corporation, Mullins, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Davis National Bank, Mullins, South Carolina.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N W., Atlanta, Georgia 30303:

1. Colony Bankcorp, Inc., Fitzgerald, Georgia; to acquire 100 percent of the voting shares of Worth Federal Savings and Loan Association, Sylvester, Georgia ("Worth"). Worth's charter will be converted to a bank charter, and the institution will be known as The Bank of Worth.

2. Synovus Financial Corporation, Columbus, Georgia, and TB&C Bancshares, Inc., Columbus, Georgia; to merge with CB Bancshares, Inc., Fort Valley, Georgia, and thereby indirectly acquire The Citizens Bank, Fort Valley, Georgia, and The Citizens Bank of Cochran, Cochran, Georgia.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Citizens Bankshares-Luxemburg, Inc., Luxemburg, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens State Bank-Luxemburg, Luxemburg, Wisconsin, a *de novo* bank.

2. Great Lakes Financial Resources, Inc. Employee Stock Ownership Plan, Homewood, Illinois; to acquire an additional 1.26 percent of the voting shares of Great Lakes Financial Resources, Inc., Homewood, Illinois, for a total of 40.6 percent, and thereby indirectly acquire First National Bank of Blue Island, Blue Island, Illinois; Bank of Homewood, Homewood, Illinois; and Community Bank of Homewood-Flossmoor, Homewood, Illinois.

3. Summcorp, Fort Wayne, Indiana; to acquire 100 percent of the voting shares of Parker Bank Holding Corporation, Indianapolis, Indiana, and thereby indirectly acquire The Parker Banking Company, Parker City, Indiana.

Board of Governors of the Federal Reserve System, April 26, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-10354 Filed 5-1-91; 8:45 am]

BILLING CODE 6210-01-F

FEO Investments, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 21, 1991.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. FEO Investments, Inc., Hoskins, Nebraska; to acquire Hoskins Insurance Agency, Hoskins, Nebraska, and thereby engage in the sale of general insurance in Hoskins, a town with a population of less than 5,000, pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 26, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-10355 Filed 5-1-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of the Assistant Secretary for Personnel Administration; Statement of Organization Functions and Delegations of Authority

This notice amends part A (Office of the Secretary) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (DHHS) by realigning functions in the Office of the Assistant Secretary for Personnel Administration, Chapter AH–20 Functions (50 FR 20853, 5/20/85). These changes redistribute the functions of three Divisions and two Staff Offices in chapter AH, section AH–20 Functions, paragraph E. Office of Human Relations (OHR) into two Divisions and one Staff Office. The revised statement is as follows:

Delete paragraph "E. The Office of Human Relations in its entirety and replace with the following:

E. The Office of Human Relations (OHR). Provides Leadership in assuring the integrity, effectiveness and impartiality of the Department's discrimination complaints, investigations and alternative dispute resolution programs; non-bargaining unit employee conduct and discipline; grievances; and merit systems program. Participates in the formulation and implementation of personnel policies, practices and matters affecting bargaining unit employees' working conditions by assuring management's compliance with the Federal Labor Relations program (5 U.S.C. chapter 71). Provides staff support and counsel to the Operating Divisions, Regional Offices, the ASPER, the Deputy Secretary, and the Secretary on the operation of these processes.

Formulates and implements regulations and operating instructions governing discrimination complaint intake, investigation and alternative dispute resolution methods; employee conduct and discipline; grievance reconsiderations; and for disposition of complaints involving alleged prohibited personnel practices and merit systems violations. Provides leadership in the identification and implementation of methods of resolving management-employee conflicts. Conducts reviews and other assessments of existing conflict resolution processes to identify opportunities for improvement of human relations within the Department; recommends changes to, or

modifications of, existing processes where appropriate.

Monitors and disseminates administrative and judicial case law concerning employment discrimination and labor-management matters. Provides legal assistance and guidance to the ASPER on matters under the functional jurisdiction of OHR. Carries out responsibilities under Civil Rights Reviewing Authority.

1. Program Support Staff. Provides centralized management support services to OHR organizational components, among them: Serves as a focal point for the receipt, control and distribution of all office mail, including formal complaints and related correspondence, hearing requests and related correspondence, requests for grievance reconsideration, and Reports of Investigation. Maintains liaison with the ASPER Administrative Office and carries out resource management activities relative to budget justification, preparation, and execution; procurement; inventory control; space management; performance management, etc. Serves as focal point for annual and *ad hoc* reports; and other guidelines governing OHR's functions.

Prepares final agency action on EEO complaints presenting conflicts of interest involving OPDIV/STAFFDIV officials. Receives and refers to EEOC for necessary action all class complaints of discrimination. Provides all necessary liaison with EEOC regarding class complaints and prepares final decisions on class complaints.

2. Complaints Division. Identifies issues in EEO complaints that are acceptable for processing; develops and maintains capability for investigation of discrimination complaints through use of contract investigators, through other Federal agencies on a reimbursable basis, and through use of in-house staff; investigates and makes recommendations for disposition of complaints involving alleged prohibited personnel practices and merit systems violations. Responsible for the implementation of initiatives designed to use mediation techniques directed toward expeditious and amicable resolution of discrimination complaints. Where appropriate, conducts analysis of complaint file and recommends final agency action. Drafts final Departmental action on complaints of discrimination; negotiates and coordinates settlements with OGC and, where appropriate, with OPDIVs and STAFFDIVs; recommends corrective and remedial actions. Ensures necessary compliance with EEOC and Departmental decisions. Serves as contact point with EEOC on all hearings and appellate matters.

Develops, coordinates and provides guidance on discrimination complaints, hearings, appeals, remands, and attorney's fees. Participates in Departmental training initiatives with respect to EEO Counselors', investigation and mediation training. Reviews OPDIV/STAFFDIV proposed issuances and final actions on matters under the Division's functional program jurisdiction.

Develops and/or maintains systems for electronic tracking of workload and related activities.

3. Labor-Management and Employee Relations Division. Formulates and oversees the implementation of Department-wide policies, regulations, instructions, delegations and procedures pertaining to labor-management and employee relations; serves as the HHS central focal point for inquiries, guidance, research and interpretation of labor-management and nonbargaining unit employee conduct and discipline issues; acts as HHS representative with the Office of Personnel Management, the Federal Labor Relations Authority, management officials in Federal, state, local, and private sector organizations and labor unions and other employee organizations at the international and national levels. Receives and impartially examines requests for reconsideration of decisions issued under the Department's formal grievance system.

Administers HHS national consultation program with appropriate unions under 5 U.S.C. 7113; administers HHS labor agreement approval process as required by 5 U.S.C. 7114; coordinates HHS dues withholding program as required by 5 U.S.C. 7115; coordinates HHS level duty to bargain obligation including developing and arguing compelling need and Agency Head negotiability determination as required by 5 U.S.C. 7117.

Participates in development and implementing of cooperative labor-management employee relations programs throughout HHS to achieve HHS management and OHR objectives; identifies information and coordinates indexing and dissemination through OHR management information systems; acts as representative for HHS in third party processes involving Department-wide labor-management and employee relations issues; provides leadership in developing and maintaining effective and innovative management representation by labor-management and employee relations professionals Department-wide.

Develops innovative dispute resolution approaches to resolve and prevent disputes and conflict in the DHHS workforce. Participates in initiatives directed toward expeditious and amicable resolution of complaints, grievances and labor-management disputes. Conducts mediation and negotiation training for Departmental and outside participants through cooperative arrangements.

Dated: April 23, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91-10414 Filed 5-1-91; 8:45 am]

BILLING CODE 4150-04-M

Administration for Children and Families

Meeting of the U.S. Advisory Board on Child Abuse and Neglect

Agency Holding the Meeting: Administration for Children, Youth, and Families.

Times and Dates: 9 a.m.–12 p.m., April 29, 1991.

Place: Humbert H. Humphrey Building, room 337A, 200 Independence Avenue, SW., Washington, DC.

Status: The meeting is closed to public observation.

Matters to be considered: At this meeting the U.S. Advisory Board will review the material on which the May 9 testimony of the Chairperson before the House Select Subcommittee on Education will be based. Accordingly, the meeting will be concerned with a document that is exempt from mandatory disclosure under section 552(b)(5) of title 5, United States Code and it is essential to close the meeting in order to protect the free exchange of internal views among Advisory Board members and to avoid undue interference with the operation of the Advisory Board.

This notice is being published less than 15 days before the meeting because the Advisory Board members have only now learned that a majority of the membership will be in Washington on April 29 for other purposes and additional input is needed to prepare the Chairperson's testimony for May 9.

Contact Person for More Information: Eileen H. Lohr, Program Assistant, U.S. Advisory Board on Child Abuse and Neglect, room 2433 Switzer Building, Washington, DC 20201, (202) 245-0670.

Dated: April 25, 1991.

Byron D. Metrikin-Gold,

Executive Director U.S. Advisory Board on Child Abuse and Neglect.

[FR Doc. 91–10316 Filed 5–1–91; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

Request for Nominations for Members of Public Advisory Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for members to serve on certain public advisory committees in the Center for Biologics Evaluation and Research. Nominations will be accepted for current vacancies and vacancies that will or may occur on the commttees during the next 12 months and beyond.

FDA has a special interest in ensuring that women, minority groups, and the physically handicapped are adequately represented on advisory committees and, therefore, extends particular encouragement to nominations for appropriately qualified female, minority, and physically handicapped candidates. Final selection from among qualified candidates for each vacancy will be determined by the expertise required to meet specific agency needs and in a manner to ensure appropriate balance of membership.

DATES: Because scheduled vacancies occur on various dates throughout each year, no cutoff date is established for receipt of nominations.

ADDRESSES: All nominations for membership, except for consumer-nominated members, should be sent to Jack Gertzog (address below). All nominations for consumer-nominated members should be sent to Naomi Kulakow (address below).

FOR FURTHER INFORMATION CONTACT: Regarding all nominations for membership, except for consumer-nominated members: Jack Gertzog, Center for Biologics Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455.

Regarding all nominations for consumer-nominated members: Naomi Kulakow, Office of Consumer Affairs (HFE–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5006.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations of members for the following three advisory committees for vacancies listed below. Individuals should have expertise in the activity of the committee.

1. *Allergenic Products Advisory Committee:* Three vacancies occurring August 31, 1991.

2. *Blood Products Advisory Committee:* Four vacancies occurring September 30, 1991.

3. *Vaccines and Related Biological Products Advisory Committee:* Three vacancies occurring January 31, 1992.

The functions of the committees listed above are: (1) to review and evaluate available scientific, technical, and medical data concerning the safety, effectiveness, and appropriate use of allergenic products, blood and products derived from blood and serum, vaccines, immunological products, and other biological products intended for use in the diagnosis, prevention, or treatment of human diseases; and (2) to make appropriate recommendations to the Commissioner. These three committees also review and evaluate intramural research programs.

Criteria for Members

Persons nominated for membership on the committees described above must have adequately diversified research and/or clinical experience appropriate to the work of the committee in such fields as allergenic products, infectious diseases, internal medicine, epidemiology, statistics, hermatology, immunology, blood banking, virology, bacteriology, pediatrics, microbiology, nuclear biology, and biochemistry, or other appropriate areas of expertise.

The specialized training and experience necessary to qualify the nominee as an expert suitable for appointment is subject to review, but my include experience in medical practice, teaching, research, and/or public service relevant to the field of activity of the committee. The term of office is 4 years.

Criteria for Consumer-Nominated Members

FDA currently attempts to place on each of the committees described above one voting member who is nominated by consumer organizations. These members are recommended by a consortium of 12 consumer organizations which has the responsibility for screening, interviewing, and recommending consumer-nominated candidates with appropriate scientific credentials. Candidates are sought who are aware of the consumer impact of committee issues, but who also possess enough technical background to understand and contribute to the committee's work. This would involve, for example, an understanding of research design, benefit/risk, and the legal requirements for safety and efficacy of the products under review, and considerations regarding individual products. The agency notes, however, that for some advisory committees, it may require such nominees to meet the same technical qualifications and specialized training required of other expert members of the committee. The term of office for these members is 4 years. Nominations for all committees listed above are invited for consideration for membership as openings become available.

Nomination Procedure

Any interested person may nominate one or more qualified persons for membership on one or more of the advisory committees. Nominations shall specify the committee for which the nominee is recommended. Nominations shall state that the nominee is aware of the nomination, is willing to serve as a member of the advisory committee, and appears to have no conflict of interest that would preclude committee membership. Potential candidates will be asked by FDA to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts in order to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. App. 2) and 21 CFR part 14, relating to advisory committees.

Dated: April 25, 1991.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91–10373 Filed 5–1–91; 8:45 am]

BILLING CODE 4160-01-M

Request for Nominations for Members and Public Advisory Committees in the Center for Drug Evaluation and Research

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for members to serve on certain public advisory committees in the Center for Drug Evaluation and Research. Nominations will be accepted for current vacancies and vacancies that will or may occur on the committees during the next 12 months and beyond.

FDA has a special interest in ensuring that women, minority groups, and the physically handicapped are adequately represented on advisory committees.

Therefore, FDA extends particular encouragement to nominations for appropriately qualified female, minority, and physically handicapped candidates. Final selection from among qualified candidates for each vacancy will be determined by the expertise required to met specific agency needs and in a manner to ensure appropriate balance of membership.

DATES: Because scheduled vacancies occur on various dates throughout each year, no cutoff date is established for receipt of nominations.

ADDRESSES: All nominations for membership, except for consumer-nominated members, should be sent to Jack Gertzog (address below). All nominations for consumer-nominated members should be sent to Naomi Kulakow (address below).

FOR FURTHER INFORMATION CONTACT:

Regarding all nominations for membership, except for consumer-nominated members:

Jack Gertzog, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455.

Regarding all nominations for consumer-nominated members:

Naomi Kulakow, Office of Consumer Affairs (HFE–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5006.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations of members for the following 12 advisory committees for vacancies listed below. Individuals should have expertise in the activity of the committee.

1. *Anti-Infective Drugs Advisory Committee:* One vacancy occurring immediately, and four vacancies occurring November 30, 1991.

2. *Antiviral Drugs Advisory Committee:* One vacancy occurring immediately, and three vacancies occurring October 31, 1991.

3. *Arthritis Advisory Committee:* Three vacancies occurring September 30, 1991.

4. *Dermatologic Drugs Advisory Committee:* Three vacancies occurring August 31, 1991.

5. *Endocrinologic and Metabolic Drugs Advisory Committee:* One vacancy occurring June 30, 1991.

6. *Fertility and Maternal Health Drugs Advisory Committee:* Two vacancies occurring June 30, 1991.

7. *Gastrointestinal Drugs Advisory Committee:* Three vacancies occurring June 30, 1991, including that of the consumer-nominated member.

8. *Medical Imaging Drugs Advisory Committee:* Three vacancies occurring June 30, 1991.

9. *Oncologic Drugs Advisory Committee:* Two vacancies occurring June 30, 1991.

10. *Psychopharmacologic Drugs Advisory Committee:* Two vacancies occurring June 30, 1991.

11. *Pulmonary-Allergy Drugs Advisory Committee:* Three vacancies occurring June 30, 1991.

The functions of the 11 committees listed above are to review and evaluate available scientific, technical, and medical data concerning the safety and effectiveness of marketed and investigational human drugs for use in the area of medical specialties, indicated by the title of the committee, and to make appropriate recommendations to the Commissioner of Food and Drugs.

12. *Drug Abuse Advisory Committee:* Four vacancies occurring June 30, 1991.

The functions of the Drug Abuse Advisory Committee are to: (1) Advise the Commissioner regarding the scientific and medical evaluation of all information gathered by the Department of Health and Human Services (DHHS) and the Department of Justice regarding the safety, efficacy, and abuse potential of drugs or other substances; and (2) recommend actions to be taken by DHHS regarding the marketing, investigation, and control of such drugs or other substances.

Criteria for Members

Persons nominated for membership on the committees described above must have adequately diversified research and/or clinical experience appropriate to the work of the committee in such fields as allergy, anesthesiology, surgery, infectious diseases, rheumatology, cardiology, dermatology, endocrinology, obstetrics and gynecology, gastroenterology, oncology, neurology, psychiatry, nuclear medicine, internal medicine, epidemiology, statistics, hematology, pediatrics, microbiology, nuclear biology, biochemistry, or other appropriate areas of expertise.

The specialized training and experience necessary to qualify the nominee as an expert suitable for appointment is subject to review, but may include experience in medical practice, teaching, research, and/or public service relevant to the field of activity of the committee. The term of office is 4 years.

Criteria for Consumer-Nominated Members

FDA currently attempts to place on each of the committees described above one voting member who is nominated by consumer organizations. These members are recommended by a consortium of 12 consumer organizations which has the responsibility for screening, interviewing, and recommending consumer-nominated candidates with appropriate scientific credentials. Candidates are sought who are aware of the consumer impact of committee issues, but who also possess enough technical background to understand and contribute to the committee's work. This would involve, for example, an understanding of research design, benefit/risk, and the legal requirements for safety and efficacy of the products under review, and considerations regarding individual products. The agency notes, however, that for some advisory committees, it may require such nominees to meet the same technial qualifications and specialized training required of other expert members of the committee. The term of office for these members is 4 years. Nominations for all committees listed above are invited for consideration for membership as openings become available.

Nomination Procedure

Any interested person may nominate one or more qualified persons for membership on one or more of the advisory committees. Nominations shall specify the committee for which the nominee is recommended. Nominations shall state that the nominee is aware of the nomination, is willing to serve as a member of the advisory committee, and appears to have no conflict of interest that would preclude committee membership. Potential candidates will be asked by FDA to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts in order to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. App. 2) and 21 CFR part 14, relating to advisory committees.

Dated: April 25, 1991.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91–10372 Filed 5–1–91; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

Meeting of the Program Advisory Committee on the Human Genome

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Program Advisory Committee on the

Human Genome and the NIH–DOE Joint Subcommittee on June 25, 1991, at the National Institutes of Health, Bethesda, Maryland. The meeting will take place from 9:30 a.m. to 5 p.m. on June 25, in Building 31, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland. The meeting will be open to the public.

This will be the sixth meeting of the Program Advisory Committee on the Human Genome and the fourth meeting of the NIH–DOE Joint Subcommittee. The purpose of the meeting is to discuss the planning, organization, and progress of the human genome project.

Dr. Elke Jordan, Deputy Director of the National Center for Human Genome Research, National Institutes of Health, Building 38A, room 609, Bethesda, Maryland 20892 (301) 496–0844, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information upon request.

Dated: April 29, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91–10496 Filed 5–1–91; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communicative Disorders; Meeting of the Research Priorities Subcommittee of the National Deafness and Other Communication Disorders Advisory Board

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Research Priorities Subcommittee of the National Deafness and Other Communication Disorders Advisory Board on May 14, 1991. The meeting will take place from 10 a.m. to 12 noon in Conference Room 8, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting which will be open to the public is being held to discuss the research priorities of the National Institute on Deafness and Other Communication Disorders. Attendance by the public will be limited to space available.

Summaries of the Board's meeting and a roster of members may be obtained from Mrs. Monica Davies, National Institute on Deafness and Other Communication Disorders, Building 31, room B2C06, National Institutes of Health, Bethesda, Maryland 20892, 301–402–1129, upon request.

Notice of the meeting has not been published the requisite 15 days in advance due to scheduling difficulties.

(Catalog of Federal Domestic Assistance Program No. 93.173, Biological Research Related to Deafness and Communicative Disorders.)

Dated: April 29, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91–10495 Filed 5–1–91; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N–91–3260]

The Performance Review Board

AGENCY: Office of the Secretary, Department of Housing and Urban Development.

ACTION: Notice of appointment.

SUMMARY: The Department of Housing and Urban Development announces the appointment of Jim E. Tarro as Vice-Chairperson to the Departmental Performance Review Board. The Board's address is: Department of Housing and Urban Development, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Persons desiring any further information about the Performance Review Board and its members may contact Elmer Lee, Acting Director, Office of Personnel and Training, Department of Housing and Urban Development, Washington, DC 20410, telephone (202) 708–2000. (This is not a toll free number.).

Dated: April 24, 1991.

Jack Kemp,

Secretary.

[FR Doc. 91–10401 Filed 5–1–91; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Recovery Plan for the Mississippi Sandhill Crane for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft recovery plan for the Mississippi sandhill crane. The crane occurs on private and federal lands in Jackson County, Mississippi. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before July 1, 1991 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Complex Field Supervisor, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, suite A, Jackson, MS 39213 (601–965–4900). Written comments and materials regarding the plan should be addressed to the Complex Field Supervisor at the above address. The plan, and comments and materials received, are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ren Lohoefener at the above address (601–965–4900 or FTS 490–4900).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, criteria for recognizing the recovery levels for downlisting or delisting them, and initial estimates of times and costs to implement the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 et seq.) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The Mississippi sandhill crane (*Grus canadensis pulla*) is an endangered species under the Endangered Species Act of 1973, as amended. Today, this population of cranes is only found on or near the Mississippi Sandhill Crane

National Wildlife Refuge in Jackson County, Mississippi. It is endangered because of loss of habitat, small population, and low natural recruitment. The plan is a draft of the third revision of the original plan, which was approved in 1976. The third revision updates what is known about the crane's life history and defines new recovery tasks and criteria to recover the species.

Public Comments Solicited

The Service solicits written comments on recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Robert G. Bowker,

Complex Field Supervisor.

[FR Doc. 91-10382 Filed 5-1-91; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Indian Affairs

Facilities Improvement and Repair Priority List for Fiscal Year 1991

AGENCY: Bureau of Indian Affairs, Interior

ACTION: Notice.

The Facilities Improvement and Repair (FI&R) list has been prepared for Fiscal Year 1991. The list is published in accordance with House Report Number 98-886, page 52, which directs the Bureau to revise the FI&R priority system by publishing in the **Federal Register** each fiscal year, the national list of projects expected to be accomplished that year within the available funds.

The notice for FY 1991 provides the approved list of FI&R projects. The list is not in priority order. Construction of these projects is subject to availability of funds. The list is based upon the Bureau's criteria for ranking projects as published in the **Federal Register**, volume 51, number 30, February 13, 1986, page 5415.

The projects for FY 1991 are:

Mitigation of Code Deficiencies
Roof Repair/Replacement
Flandreau Indian School (Phase II) (SD)
Lower Brule High School (SD)
Ft. Thompson Elementary School (SD)
Jicarilla Agency (NM)
Kickapoo Nation School (KS)
Haskell Indian Junior College (KS)
Crow Agency (MT)
Oneida Tribal School (WI)
Sequoyah High School (OK)
Crownpoint Community School (NM)
Pine Springs Boarding School (AZ)
Navajo Gas Lines (NM, AZ)
Richfield Dormitory (UT)
Sells Headquarters and Santa Rosa School (AZ)
Salt River Headquarters and School (AZ)
Quileute Tribal School (WA)
Paschal Sherman Kitchen-Dining (WA)

FOR FURTHER INFORMATION CONTACT: Virgil Pochop, Director, FAcilities Management and Construction Center, Bureau of Indian Affairs, P.O. Box 1248, Albuquerque, NM 87103 (505) 766-2825.

Patrick A. Hayes,

For Stanley Speaks, Acting Deputy Commissioner of Indian Affairs.

[FR Doc. 91-0383 Filed 5-1-91; 8:45 am]

BILLING CODE 4310-RK-M

Bureau of Land Management

[AK-964-4230-15, F-14851-D, F-14851-E]

Alaska Native Claims Selection; Publication

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Clams Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to NANA Regional Corporation, Inc., successor in interest to Deering Ipnatchiak Corporation, for approximately 1,230 acres. The lands involved are in the vicinity of Deering, Alaska, within Tps. 6N., Rs. 20 and 21 W., Kateel River Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Tundra Times. Copies of the decision may be obtained by contracting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Archorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation shall have until June 3, 1991 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file and appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Carolyn A. Bailey,

Lead Land Law Examiner, Branch of Doyon/Northwest Adjudication.

[FR Doc. 91-10404 Filed 5-1-91; 8:45am]

BILLING CODE 4310-JA-M

[CA-010-01-4212-13, CACA 28113]

Realty Action: Acquisition of Land by Exchange: 25-Year Renewable Lease to the State of California Wildlife Conservation Board, CA

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The following described land is being considered for acquisition, through exchange, and lease under sections 206 and 302 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716, 43 U.S.C. 1732).

Offered private land:

A parcel of land located in Section 21, Township 5 North, Range 5 East, Mount Diablo Meridian, Sacramento County, California, more particularly described as follows:

From the Northeast corner of Section 21, Township 5, North, Range 5 East, Mount Diablo Meridian, South 43°41'05" West 4895.57 feet to the POINT OF BEGINNING; thence from the POINT OF BEGINNING south 80°54'30" East 464.36 feet to a point; thence South 23°51'19" East 196.00 feet to a point; thence South 60°59'02" West 223.54 feet to a point; thence North 16°02'47" West 278.34 feet to a point; thence North 78°32'00" West 283.07 feet to a point; thence North 17°54'52" East 39.19 feet to the POINT OF BEGINNING.

The parcel of land to which this description applie contains 1.50 acres, more or less.

The above-described parcel would be acquired from the Nature Conservancy (TNC) to provide the site for a Visitors Center at the Consumnes River Preserve, a cooperative conservation effort between Bureau of Land Management (BLM), Ducks Unlimited and TNC, dedicated to the preservation and restoration of the native communities found along the river corridor, including valley oak and wetland habitats. The Visitors Center would be jointly funded and develop by the BLM, TNC, and the State of California Wildlife Conservation Board (WCB).

Following transfer of title to the United States, the 1.5-acre site would be leased to WCB to administratively enable the appropriation of available funds from WCB for construction of the facility. Operation and maintenance of

the center would meet the terms of the lease and the center would be managed according to the Cosumnes River Preserve Management Plan.

SUPPLEMENTARY INFORMATION: Acquisition and lease of the subject 1.5-acre parcel would make it possible to construct a visitor center on the periphery of the preserve using funds available from the WCB. The center would serve as the main visitor gathering place, providing parking, picnic tables, restrooms, drinking fountain, interpretative displays and brochures, a canoe-launch area, trailhead access, a docent center, and staff offices. The building site would be located off Franklin road on an existing pad, providing excellent access and visibility. While there would be expansive views of the preserve from the center, it is removed from the primary roosting areas to avoid unnecessary disturbance to sensitive species.

Acquisition of the parcel would be at fair market value under the "TNC/BLM Statewise Exchange Pooling Agreement." The public lands conveyed to TNC to balance the Pooling Agreement accounts have been or will be identified in Notices of Realty Action published in the **Federal Register** as required by 43 CFR 2201.1.

FOR ADDITIONAL INFORMATION: Contact Kay Miller, (916) 4474 or at the address below.

ADDRESSES: For a period of 45 days from publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, c/o Area Manager, Folsom Resource Area, 63 Natoma Street, Folsom, CA 95630.

Dated: April 5, 1991.

D.K. Swickard,

Area Manager.

[FR Doc. 91-10406 Filed 5-1-91; 8:45 am]

BILLING CODE 4310-40-M

[UT-020-01-4212-16; U-54826, U-54827, U-54167, U-54169]

Salt Lake District; Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action; Termination of Desert Land Classifications; Utah.

SUMMARY: This action terminates desert land classifications U-51467, U-51469, U-54826, and U-54827.

EFFECTIVE DATE: Termination of the classifications is effective with the publication of this document.

FOR FURTHER INFORMATION CONTACT: Terry Catlin, Pony Express Resource Area, Salt Lake District, 2370 South 2300 West, Salt Lake City, Utah 84119.

SUPPLEMENTARY INFORMATION: The following described lands in Tooele County, Utah were classified as suitable for Desert Land Entry under the act of March 13, 1877 (19 Stat. 377; 43 U.S.C. 321-323 as amended):

	Acres
U-51467, classified Oct. 19, 1985:	
T. 5S., R. 5W., S.L.M. Utah. Section 6, Lots 1-5, S½NE¼, SE¼NE¼	315.20
U-51469, Classified October 19, 1985:	
T. 5S., R.R. 5W., S.L.M., Utah. Section 6, Lots 6 and 7, E½SW¼SE¼	315.69
U-54826, Classified September 13, 1985:	
T. 8S., R. 6W., S.L.M., Utah. Section 14, W½	320.00
U-54827, Classified September 13, 1985.	
T. 8 S., R. 8W., S.L.M., Utah. Section 15, E½	320.00

The lands described above were classified as suitable for Desert Land Entry subject to obtaining sufficient water and an economic study to determine the feasibility of cultivating the land at a profit. It was determined that there was not sufficient water to irrigate the entries and that they could not be cultivated at a profit.

Subsequently, Desert Land Application U-51467 was withdrawn and the remaining entries were rejected. The classifications are no longer considered to be appropriate and are hereby terminated.

The cancellations and rejections were noted to the official records on November 29, 1990 and on the date the lands became open to the operation of the public land laws and location under the mining laws.

Deane H. Zeller,

Salt Lake District Manager.

[FR Doc. 91-10376 Filed 5-1-91; 8:45 am]

BILLING CODE 4310-DQ-M

DEPARTMENT OF THE INTERIOR

[CO-070-01-4212-13]

Intent to Consider Amendment of the Grand Junction Resource Area, Resource Management Plan, 1987, to Address a Proposed Exchange of Bureau of Land Management and Private Lands Near Grand Junction, CO.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to consider Amendment of the Grand Junction Resource Area Resource Management Plan, 1987, and notice of Public Meetings and Public Comment Period to identify issues to be addressed in an Environmental Assessment on the proposed Amendment.

SUMMARY: Pursuant to section 102 of the National Environmental Policy Act of 1969, and section 202 of the Federal Land Policy and Management Act of 1976, the Bureau of Land Management, Grand Junction Resource Area, will consider an amendment of the Grand Junction Resource Area Resource Management Plan, 1987, and will prepare an Environmental Assessment on the proposed amendment.

SUPPLEMENTARY INFORMATION: The Plan Amendment and Evironmental Assessment are being developed to consider a proposed land exchange in Mesa County, Colorado. The proposal being considered involves exchange of up to 6,440 acres of Bureau of Land Management land in the Hawxhurst Creek area four miles northeast of Collbran, Colorado, for approximately 640 acres of privae land along the Colorado River two miles south of Loma, Colorado. The exchange proposal has been made to consolidate public ownership for public recreation along the Colorado River.

Two public meetings will be held concerning this proposal: 7 p.m., June 4, 1991 at the Bureau of Land Management office, 764 Horizon Drive, Grand Junction, Colorado, and 7 p.m., June 5, 1991 at the Collbran Auditorium, corner of Main and High Street, Collbran, Colorado. Written comments on the proposal will be accepted until June 10, 1991. The purpose of these public meetings and public comment period is to identify issues and accept comments concerning the proposed land exchange. An Environmental Assessment and Record Of Decision concerning the proposed Plan Amendment will be prepared following the public comment period.

A Plan Amendment and Environmental Assessment with favorable Record of Decision must be completed prior to proceeding with the proposed land exchange. If the decision is to proceed with a land exchange, a concurrent Notice of Realty Action would also be filed with the Environmental Assessment and Record of Decision. A 30 day public comment and protest period would follow the filing of the Record Of Decision.

All persons who were involved in the initial Plan Amendment process will receive a letter outlining the Record of Decision and may receive copies of the Environmental Assessment upon request.

FOR FURTHER INFORMATION: Any additional information concerning this proposed land exchange and Amendment of the Grand Junction Resource Area Resource Management Plan, 1987, is available for review in the Grand Junction Resource Area Office, 764 Horizon Drive, Grand Junction, Colorado 81506, or by contacting Carlos Sauvage, Realty Specialist, at (303) 243-6561.

Bruce Conrad,

Director Manager.

[FR Doc. 91-40405 Filed 5-1-91; 8:45 am]

BILLING CODE 4310-5B-M

[CO-942-91-4730-12]

Colorado: Filing of Plats of Survey

April 17, 1991.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10 a.m., April 17, 1991.

The plat (in 10 sheets) representing the dependent resurvey of mineral claims in sections 19 and 20, T. 3 S., R. 73 W., Sixth Principal Meridian, Colorado, Group No. 679, was accepted February 14, 1991.

This survey was executed to meet certain administrative needs of this Bureau and the Forest Service.

The plat representing the dependent resurvey of portions of the subdivisional lines and the subdivision lines of sections 25, 26, and 35, the subdivision of sections 25 and 26, and the metes-and-bounds survey in section 26, T. 50 N., R. 8 W., New Mexico Principal Meridian, Colorado, Group No. 916, was accepted April 2, 1991.

This survey was executed to meet certain administrative needs of the Park Service.

The plat representing the dependent resurvey of Homestead Entry Survey (H.E.S.) No. 343, T. 10 N., R. 84 W., Sixth Principal Meridian, Colorado, Group No. 932, was accepted March 26, 1991.

This survey was executed to meet certain administrative needs of the Forest Service.

The plat representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of section 5, and a metes-and-bounds survey of lots 6 and 7, in section 5, T. 42 N., R. 4 W., New Mexico Principal Meridian, Colorado, Group No. 961, was accepted April 2, 1991.

This survey was executed to meet certain administrative needs of this Bureau.

The supplemental plat amending lots 5 and 9 and creating new lots 13, 14, 15, 16, 17, 18, and 19, T. 21 S., R. 71 W., Sixth Principal Meridian, Colorado, was accepted March 14, 1991.

This supplemental plat as prepared to meet certain administrative needs of the Bureau.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

Jack A. Eaves,

Chief, Cadastral Surveyor for Colorado.

[FR Doc. 91-10377 Filed 5-1-91; 8:45 am]

BILLING CODE 4310-JB-M

Minerals Management Service

Notice To Lessees and Operators and Pipeline Right-of-Way Holders

AGENCY: Minerals Management Service, Interior.

ACTION: Notice to Lessees (NTL) and operators of federal oil, gas, sulphur and salt leases and pipeline right-of-way holders in the Outer Continental Shelf, Gulf of Mexico Region.

SUMMARY: Notice is hereby given that the Minerals Management Service (MMS), Gulf of Mexico OCS Region (GOMR), proposes to change its historic shipwreck survey requirements and the areas on the Outer Continental Shelf (OCS) where such surveys will be required. These proposed changes are based on a recently completed study that has better defined and concentrated areas on the Gulf of Mexico OCS where historic shipwrecks are likely to occur. The proposed requirements significantly reduce (approximately 50 percent) the area where historic shipwreck surveys will be required. Based on the study, the GOMR also proposes a more concentrated survey interval (i.e., from 150 meters to 50 meters) in high probability areas of historic shipwrecks to better locate, evaluate, and protect historic period wrecks that may occur in these high probability areas. These proposed changes are specifically described herein and presented as a new NTL which, if adopted, would supersede all previous archaeological NTL's and Letters to Lessees (LTL).

DATES: Comments on the subject proposed NTL must be received on or before June 17, 1991.

ADDRESSES: Comments should be submitted to: Dr. Richard J. Anuskiewicz or Mr. John R. Greene, Office of Leasing and Environment (MS 5400), Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed NTL is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). Dr. Richard J. Anuskiewicz or Mr. John R. Greene, Minerals Management Service, Gulf of Mexico OCS Region, Leasing and Environment, Environmental Operations, Unit 2, MS 5442, telephone (504) 736-2796 or 736-2865.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to inform the public, pursuant to the National Historic Preservation Act of 1966 (Pub. L. 89-665), as amended, the National Environmental Policy Act of 1969 (Pub. L. 91-190), and the Outer Continental Shelf Lands Act of 1978 (Pub. L. 95-372), as amended, that the Minerals Management Service, Gulf of Mexico OCS Region, is proposing to amend its historic shipwreck survey requirements. Historic shipwreck survey requirements are currently contained in the GOMR NTL 75-3, Revision No. 1, dated October 1, 1982, titled Outer Continental Shelf, Cultural Resource Requirements for the Gulf of Mexico Region. The NTL proposed herein will supersede all previous archaeological NTL's. The MMS will sponsor a workshop to present background data related to this proposed NTL. The workshop is scheduled for the fourth Thursday from the initial issuance of this Public Notice, and will be held at the MMS Gulf of Mexico Regional Office, at 1201 Elmwood Park Boulevard, New Orleans, Louisiana, in room 111, from 1 to 4 p.m.

Dated: April 24, 1991.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico Region.

Outer Continental Shelf Archaeological Resource Requirements for the Gulf of Mexico OCS Region

April 1991.

The Federal Government's responsibilities in archaeological resource management and protection on the Outer Continental Shelf (OCS) are based on the requirements of the National Historic Preservation Act of 1966, as amended, and on other applicable laws and regulations. The Minerals Management Service (MMS) has issued regulations at 30 CFR 250.33(b)(15), 250.33(o), 250.34(b)(8)(v)(A), 250.34(s), 250.157(a)(5), as well as lease

stipulations which, if invoked, require OCS operators to conduct surveys and prepare reports designed to fulfill these archaeological resource legal responsibilities. Notices to Lessees and Operators (NTL) Nos. 74–10 and 75–3 were issued by the Gulf of Mexico OCS Region (GOMR) to implement the provisions of the lease stipulations. On October 1, 1982, NTL No. 75–3 was revised and issued by the GOMR to provide guidance on uniformity and consistency of archaeological resource field surveys and reports.

In June 1987, the MMS contracted with Texas A & M University to update and improve a 1977 historic resources study and to broaden the historic shipwreck database. This study was specifically designed to reevaluate the zone of historic shipwreck high probability. In November 1989 the study was completed. Based on the study results, the MMS has redefined the high probability areas for the occurrence of historic shipwrecks. This has resulted in a substantial reduction in the number of lease blocks in the Gulf of Mexico (i.e., approximately 50 percent) requiring a magnetometer survey. The study also demonstrated a compelling need to increase magnetometer data density in the high probability areas in order that historic shipwreck magnetometer patterns may be recognized. This shall be accomplished by reducing the survey linespacing interval, in the historic shipwreck high probability areas, from 150 meters (m) to 50 m. The NTL is presented as a series of enclosures. Enclosure 1 is titled Requirements for Archaeological Field Surveys. Enclosure 2 is titled Standards for Archaeological Resource Reports. Enclosure 3 is titled Requirements for Mitigation and Operational Restrictions.

The proposed NTL shall be finalized upon completion of the **Federal Register** review and comment period.

Enclosures.

J. Rogers Pearcy,

Regional Director.

Enclosure No. 1.

Requirements for Archaeological Resource Field Surveys

I. Introduction

After a lease is issued the GOMR will:

(1) Notify the operator in writing if the decision is made to invoke the archaeological resource report requirement portion of the stipulation.

(2) Identify to the operator the type of report (historic shipwreck, historic shipwreck/prehistoric site, or prehistoric site) and the standards that shall be required for compliance.

After notification from the GOMR of the decision to invoke the report requirement of the stipulation, the operator shall conduct the appropriate high-resolution remote sensing survey to determine the potential existence of archaeological resources that may be affected by future lease operations. In most cases, the archaeological resource field survey requirements will be similar to those for surveys conducted for shallow hazards or other purposes. The operator in encouraged to conduct the surveys concurrently. Pipeline right-of-way holders are directed to contact the Regional Supervisor, Leasing and Environment, GOMR, for determination of the type of archaeological resource field survey and report that will be required.

In the letter of invocation, the GOMR may reguest to be notified at least 72 hours prior to commencement of the survey so that arrangements can be made for observation of field procedures. An archaeologist and geophysicist need not be present while the archaeological resource field survey is being conducted, but they should be involved in survey planning. The survey shall be conducted prior to submitting an Exploration Plan, Development Operations Coordination Document, or pipeline application which proposes bottom disturbing operations.

When any of the following requirements cannot be met for technical or logistical reasons, an explanation of the problem shall be provided in the archaeological resource report.

II. Data Acquisition Instrumentation

Geophysical instrumentation for archaeological resource field surveys shall be representative of the state-of-the-art in technological development and shall be deployed in a manner which minimizes interference among the instrumentation systems. All data recorders shall be interfaced into the navigation system to assure proper integration of information. The equipment operator shall ensure that all instrumentation is adequately tuned and that all recorded data are readable, accurate, and properly annotated.

The following instrumentation shall be utilized in conducting archaeological resource field surveys:

A. *Magnetometer.* A magnetometer need be used only for historic shipwreck (HS) and historic shipwreck/prehistoric site (HS/PS) surveys. Total field intensity instruments shall be used to determine the possible presence of historic shipwrecks. Data obtained shall be of such quality so as to permit detection and evaluation of magnetic anomalies within the survey area.

The sensor of the magnetometer shall be towed as near as possible to the seafloor; a distance of six meters or less is required. A mechanical or digital depth sensor shall be attached to the magnetometer sensor, and each survey line shall be annotated with tow sensor depth and with the start of the line (SOL) and end of the line (EOL) times.

Magnetometer sensitivity shall be one gamma or less, with the data sampling rate not to exceed one-second intervals. The use of the "zero-mode" setting during magnetometer surveying is prohibited. This surveying mode does not measure the ambient magnetic field as required. Background noise level shall not exceed three gammas peak to peak. Analog strip chart recorders shall be equipped with dual trace pens. Recording scales shall include both 1,000-gamma and 100-gamma full scale, respectively. Shot points and recorder speed must be annotated on the strip charts for each survey line. The GOMR recommends that the strip chart recorder speed be approximately two inches per minute. Whenever possible, the magnetometer should be towed a minimum distance of two and one-half vessel lengths behind the vessel to eliminate the magnetic influence and effect of the vessel.

B. *Dual Channel Side-Scan Sonar.* A dual channel side-scan sonar system shall be used to record continuous planimetric images of the seafloor. The system shall be operated in a manner that provides 100 percent coverage of the seafloor in the survey area. Data obtained should be of such quality so as to permit detection and evaluation of seafloor objects and features within the survey area.

Whenever possible, the side-scan sonar sensor shall be towed above the seafloor at a distance of 10 to 20 percent of the range of the instrument. The vertical sound beam width shall be appropriate to the water depth, and the horizontal sound beam width shall provide optimum resolution. Tuning should be accomplished in a manner that enhances the echo returns from small nearby objects and features without sacrificing the quality of echo returns from more distant objects and features.

C. *Subbottom Profiler.* A subbottom profiler system shall be used to determine the character of near-surface geological features. Data obtained should be of such quality so as to permit evaluation of these features for determining any possible prehistoric archaeological significance. The system

used shall be capable of providing at least one to two meters of resolution within the upper 15 meters of sediment.

D. *Depth Sounder.* Continuous water depth measurements shall be made using a high-frequency narrow-beam depth sounder. Bathymetric data shall be recorded with a recording sweep appropriate to topography and water depth.

E. *Additional Investigations.* Under certain conditions, MMS may require additional instrumentation and methods such as underwater television; still, video or movie cameras; divers; remote or manned submersibles; coring; and additional geophysical survey lines. The operator will be notified by letter of such requirements at the time of stipulation invocation. Right-of-way pipeline holders are directed to contact the Regional Supervisor, Leasing and Environment to ascertain whether additional instrumentation and methods are required.

III. Survey Parameters

The following navigation and survey pattern requirements shall be adhered to when conducting archaeological resource field surveys:

A. *Navigation.* Navigation for the survey shall be accomplished by using a state-of-the-art continuous positioning system correlated to annotated geophysical records. The system shall have an accuracy of 5 meters or less. The nominal fix spacing shall be no more than 150 meters.

B. *Survey Pattern*—1. *Lease Surveys.* When multiple operations on the lease are planned or probable, it may be advantageous to conduct a lease survey. This survey shall cover the entire area of the lease, as well as that protion external to the lease within which operational activities may cause physical and/or long-term magnetic disturbances. The area of physical disturbances includes, but is not limited to, the area within which drilling vessel anchors may be placed, but does not include the area within which work boat anchors may be placed or the area within which similar minimal disturbances may occur. The survey shall be run along parallel primary lines spaced at a maximum of 50 meters for HS or HS/PS surveys and at a maximum of 300 meters for prehistoric site (PS) surveys with cross-tie lines spaced at a maximum of 900 meters for each type of survey. Tighter line spacing may be required by the GOMR in areas of known significant or potentially significant archaeological resources. The operator will be notified by letter of such requirements at the time of stipulation invocation.

Lease HS and HS/PS surveys which are conducted on lease blocks that have been identified by the letter of invocation as being in water depths greater than 60 m shall have the same survey pattern as lease PS surveys.

2. *Single Drill Site/Platform Surveys (Site Specific Surveys).* These surveys shall be run in an area approximately 914 meters (3,000 ft) square centered upon the proposed drill site with primary lines spaced at a maximum of 50 meters for HS or HS/PS surveys or at a maximum of 300 meters for PS surveys with three equidistant cross-tie lines. Additional survey lines may be necessary so that the area surveyed includes the area within which operations may cause physical and/or long-term magnetic disturbances. Tighter line spacing may be required by the GOMR in areas of known significant or potentially significant archaeological resources. The area of physical disturbances includes, but is not limited to, the area within which drilling vessel anchors may be placed, but does not include the area within which work boat anchors may be placed or the area within which similar minimal disturbances may occur. Single drill site/platform surveys are not required in areas where lease surveys have already provided sufficient archaeological coverage of the area.

Site-specific HS and HS/PS surveys which are conducted on lease blocks that have been identified by the letter of invocation as being in water depths greater than 60 m shall have the same survey pattern as site-specific PS sureys.

3. *Pipeline Surveys*—(a) *Right-of-Way Pipelines.* The survey pattern for all right-of-way pipelines shall include a line along the proposed pipeline route (center line) and offset parallel lines (on either side of the center line) spaced at a maximum of 50 meters of HS and HS/PS surveys. For PS surveys, the survey shall include a line along the proposed centerline with offset parallel lines spaced at a maximum of 300 meters. The number of offset parallel lines must be sufficient to provide adequate survey coverage of the area within which operations may cause physical and/or long-term magnetic disturbances. A minimum of two offset parallel lines shall be required. The area of physical disturbances includes, but is not limited to, the area where pipeline lay barge anchors will be placed.

A survey of a right-of-way pipeline which will be laid in an area where an HS or HS/PS survey is required and will be in water depths greater than 60 meters shall include a center line with offset parallel lines spaced at a maximum of 300 meters. The number of offset parallel lines must be sufficient to provide adequate survey coverage of the area within which operations may cause physical and/or long-term magnetic disturbances. A minimum of two offset parallel lines shall be required.

(b) *Lease-Term Pipelines.* Archaeological resource surveys for lease-term pipelines which will be laid within leases that have been previously surveyed at 50 m line spacing interval (i.e. HS, or HS/PS) are not required. Surveys for lease-term pipelines which will be laid within block(s) that have been previously surveyed and are exclusively considered to have a high potential for prehistoric archaeological resources (i.e. PS) are also not required.

In water depths shallower than 60 meters, surveys for lease-term pipelines on leases designated to have a high probability for historic period shipwrecks (i.e. HS, HS/PS) shall be conducted using the survey pattern discussed in paragraph 3(a) for right-of-way pipelines. Previous surveys of these leases at 150 or 300 meter linespacing will not be adequate.

Surveys for lease-term pipelines which will be laid within leases in water depths greater than 60 meters are not required. However, for these pipelines, an archaeological resource report based on data obtained from a previous shallow hazard survey shall be required.

Enclosure No. 2

Standards for Archaeological Resource Reports

I. Introduction

An evaluation and synthesis of data gathered during an archaeological resource survey shall be included in a report prepared and signed by an archaeologist and a geophysicist. Professional personnel in these fields should have credentials and experience sufficient to ensure that they are able to adequately perform the necessary work. As needed, specialists in other fields may participate in data analysis and report preparation.

All original data used to prepare the archaeological resource report shall be maintained by the lessee or permittee and be made available to the GOMR upon request at any time prior to lease termination or pipeline right-of-way relinquishment.

Prior to commencing any drilling, production, or construction operations, the operator/applicant/permittee shall submit to the Regional Supervisor, Field Operations, an original report and three (3) copies to determine the potential existence of any archaeological resource that may be affected by the operations.

The report shall be based on an assessment of the data from remote-sensing surveys in accordance with the specifications of this NTL, subsequent appropriate LTL's, and other pertinent archaeological and environmental information. Data required for shallow hazard surveys and platform foundation analyses shall generally be sufficient for PS resource reports.

II. Contents of Archaeological Resource Reports

Archaeological resource reports shall include the following information:

A. A description of the area surveyed including lease number(s), block number(s), OCS lease area(s), and water depths.

B. A listing of personnel and duties for individuals involved in survey planning, survey conduct, and report preparation.

C. A discussion of the archaeological resource field survey including the following:

(1) A brief description of the navigation system with a statement of its estimated accuracy for the area surveyed.

(2) A brief description of survey instrumentation including scale, sensitivity settings, sampling rate per second, and tow depths where required.

(3) A description of the survey vessel including vessel size, sensor configuration, navigation antenna locations, and cable lengths.

(4) Vessel speed and course changes.

(5) Sea state and weather conditions.

(6) A copy of the original daily survey operations log.

(7) A description of survey procedures including a statement of survey and record quality, a comparison of survey line crossings, and a discussion of any problems which may affect the ability of the report preparation personnel to determine the potential for archaeological resources in the survey area.

D. A navigation postplot map of the survey area at a scale of 1:12,000 showing survey lines, shot points at *152 meter* (500 foot) intervals, and line direction with Universal Transverse Mercator coordinates, X and Y coordinates, and latitude-longitude reference points from appropriate regional systems. This map, or separate maps at the same scale which also show survey lines, shot points, and line direction, shall be oriented to true north and shall delineate the following, as appropriate:

(1) The horizontal and vertical extent of all relict geomorphic features having potential for associated prehistoric sites. Such areas include, but are not limited to, tidal estuaries, embayments, barrier islands, beach ridge sequences, spits, alluvial terraces, and stream channels. When relict fluvial systems are recorded, the map shall:

(a) Differentiate between generations of channeling when more than one generation is present;

(b) Show any internal channel features such as point bar deposits and terraces;

(c) Delineate any channel margin features such as natural levee ridges; and

(d) Indicate all depths of channel banks and channel axes.

Note: An isopach mat of channel fill sediments is often the most efficient means of conveying the above information, but this method alone will not allow differentiation between more than one generation of channeling.

(2) Bathymetry.

(3) All magnetic anomalies and seafloor side-scan sonar contracts of unknown source (i.e., magentic anomaly, map symbol = ▲; side-scan sonar contact, map symbol = (**SSS**). The duration of all magnetic anomalies shall be plotted on the survey map at a scale of 1:12,000.

(4) Sites of proposed oil and gas operations (i.e., proposed well locations, platform sites, and/or pipelines), when available at the time of report preparation.

(5) Sites of former oil and gas operations (i.e., abandoned well locations, platform sites, and/or pipelines).

E. If an analysis of the potential for prehistoric sites within the survey area is required, the report shall include:

(1) a review of current existing literature on the late Pleistocene and Holocene geology, paleogeography and sea level change in the area, marine and coastal prehistory, and previous archaeological resource reports in the area, when available. A list of suggested references will be made available upon request.

(2) A discussion of relict geomorphic features and their archaeological potential to include the following:

(a) The type, age, and association of the features mapped;

(b) The acoustic characteristics of channels and their fill material;

(c) Evidence for preservation or erosion of channel margins;

(d) Evidence for more than one generation of fluvial downcutting; and

(e) The sea level curves used in the assessment.

(3) A discussion of the potential for identification and evaluation of buried prehistoric sites based on the capabilities of current technology in relation to the thickness and composition of sediments overlying the area of a potential site.

F. If an analysis of the potential for historic shipwrecks within the survey area is required, the report shall include, as appropriate, the following:

(1) A current review of existing records for reported shipwreck locations in the survey area and adjacent areas;

(2) A list of the magnetic anomalies with the lease block and survey line location (corrected for sensor offset), gamma intensity, lateral extent (duration), whether the anomaly is characterized by a dipolar or monopolar signature, and magnetometer sensor tow depth of each;

(3) A list of side-scan sonar contacts with the lease block and survey line location (corrected for sensor offset), size, shape, and height of protrusion above the seafloor of each;

(4) A discussion of any magnetic anomalies and side-scan sonar contacts of unknown source in terms of their potential as historic shipwrecks;

(5) A discussion of any correlation between magnetic anomalies or side-scan sonar contacts and known or probable sources;

(6) A discussion of the potential for shipwreck preservation in terms of the effects of past and present marine processes; and

(7) A discussion of the potential for identification and evaluation of potential shipwrecks based on the capabilities of current technology in relation to the water depth, probable thickness and composition of sediments overlying the potential shipwreck location, and the preservation potential.

G. Representative data samples, as appropriate, shall be submitted for the following:

(1) A representative sample of subbottom profiler data for each type of relict landform identified. When more than one generation of fluvial channeling is evident, a sample depicting each shall be submitted. Each sample must be readable and include horizontal and vertical scales. Any highlighting of the sample data shall be on a separate overlay rather than directly on the copy. In no instance should original survey data be highlighted. If relict channel features are referenced in the text of the archaeological report, representative copies of the subbottom profiler record of these geologic features shall be included in the report.

(2) A copy of the side-scan sonar data where contacts representing unidentified objects are recorded. The copies must be readable and shall

include the scale. Any highlighting of the sample data shall be on a separate overlay rather than directly on the copy. In no instance should original survey data be highlighted.

(3) Magnetometer data as follows:

(a) For lease surveys and site specific surveys, a clear copy of three complete lines of magnetometer data. Two of these lines shall be representative data samples of primary survey lines and the third survey line shall be a cross-tie line. The primary survey lines shall be adjacent lines and run in two different cardinal directions (e.g., one survey line heading north and the other heading south). Whenever possible these survey lines shall include unindentified magnetic anomalies.

(b) For pipeline surveys (i.e. lease term or right-of-way) that are three (3) miles or longer in length, a clear copy of approximately one-quarter (25%) of the magnetometer data (analog strip chart) for the center line of the survey. For pipeline surveys less than three (3) miles in length, the entire centerline magnetometer survey shall be submitted. These data shall include representative samples of unidentified magnetic anomalies (if any) that were recorded on the center line. Sample data may be reduced in size for report reproduction. Data quality must be sufficient to clearly depict both the 1000-gamma and 100-gamma scale traces of the analog strip chart recorder.

H. A summary of conclusions and recommendations supported by the archaeological resource field survey data and archaeological analyses including:

(1) A discussion of known or potential archaeological resources;

(2) Recommendations for avoidance or for further archaeological investigations; and/or

(3) Recommendation that operations be permitted because data recovery negates adverse effects to archaeological resources.

I. A discussion of the data and results from any additional investigations that may be required by the GOMR shall be appended to the archaeological resource report.

III. Review of Archaeological Resource Reports

A. The GOMR will determine whether a report meets the requirements contained in the invocation notification and/or this NTL. The review will be conducted by personnel with archaeological, geophysical, and other appropriate expertise. The GOMR will determine if the survey was performed properly and will evaluate the geophysical interpretations and archaeological conclusions.

B. If the report is not adequate or complete, the GOMR will notify the operator or right-of-way holder in writing of the problems and identify what data or information are necessary to correct or complete the report.

C. Based on the GOMR review of the report findings, the GOMR will notify the operator or right-of-way holder in writing of any mitigating measures or operational restrictions which may be required.

D. A previously submitted archaeological resource report may be acceptable for satisfying the archaeological resource report requirements under a new lease agreement, particularly if the lease falls exclusively within the area of high probability for the occurrence of prehistoric archaeological resources. Prior to submittal of an Exploration Plan or Development Operations Coordination Document, the operator shall submit to the Regional Supervisor, Leasing and Environment, a written request for review of an archaeological report prepared for an expired lease to determine its compliance with current MMS requirements. A clean copy of the report to be reviewed shall be included with the operator's request.

Enclosure No. 3

Requirements for Mitigation and Operational Restrictions

A. When an archaeological resource field survey and report indicate that a potential archaeological resource may be present and lease operations or pipeline right-of-way operations are proposed within its immediate area, the GOMR will require the operator or right-of-way holder to either:

1. Locate the operation so as not to adversely affect the area of the archaeological resource; or

2. Establish to the satisfaction of the GOMR that an archaeological resource does not exsit or will not be adversely affected by operations. This shall be done by further archaeological investigation, conducted by an archaeologist and a geophysicist, using survey equipment and techniques deemed necessary by the GOMR. A report on the investigation shall be submitted to the GOMR for review.

B. If the GOMR determines that an archaeological resource is present in the area and may be adversely affected by operations, the operator or right-of-way holder will be notified immediately. Under these circumstances, the GOMR is required to engage in additional consultations in accordance with 36 CFR 800.4. The operator or right-of-way holder shall take no action that may adversely affect the archaeological resource until the GOMR has concluded these consultations and has provided the opeator with instructions on how to protect the resource.

C. If the operator or right-of-way holder discovers any archaeological resource while conducting operations, a report of the discovery shall be immediately made to the GOMR. The operator or right-of-way holder shall make every reasonable effort to preserve the archaeological resource until the GOMR has issued instructions on how to protect it.

[FR Doc. 91-10370 Filed 5-1-91; 8:45 am]
BILLING CODE 4310-MR-M

National Park Service

Vancouver Historical Study Commission; Meeting

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of meeting of Vancouver Historical Study Commission.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1988), that a meeting of the Vancouver Historical Study Commission will be held on May 21, 1991 in Vancouver, Washington. The meeting will be held in the Vancouver City Council Chambers, 210 East 13th Street, Vancouver, Washington. It will start at 1 p.m. and is planned to conclude by 5 p.m.

The purpose of the meeting is for the Commission to discuss the scope of its responsibilities and plan what actions are necessary to meet the requirements of Public Law 101-523.

The meeting will be open to the public. Space and facilities to accommodate members of the public are limited and persons will be accommodated on a first-come, first-served basis. Anyone may file with the Commission a written statement concerning matters to be discussed. The Chairman may also permit attendees to address the Commission, but may restrict the length of presentations as necessary to allow the Commission to complete its agenda within the allotted time.

Persons wishing further information concerning the meeting, or who wish to submit written statements, may contact Ms. Linda Baker, Pacific Northwest Region, National Park Service, 83 South King Street, suite 212, Seattle, Washington 98104 (telephone 206-553-

1002). Draft summary minutes of the meeting will be available for public inspection approximately 3 weeks after the meeting, in Park Headquarters, Fort Vancouver National Historic Site, 612 East Reserve Street, Vancouver, Washington.

Dated: April 23, 1991.

William J. Briggle,

Acting Regional Director.

[FR Doc. 91-10302 Filed 5-1-91; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-25,560]

Central Sportwear, Norlina, NC; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 18, 1991 in response to a worker petition which was filed on behalf of workers at Central Sportswear, Norlina, North Carolina.

The petitioning group of workers is subject to an ongoing investigation for which a determination has not yet been issued (TA-W-25,452). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 24th day of April 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-10360 Filed 5-1-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-24,316]

Hercules, Inc., Radford Army Ammunition Plant, Radford, VA; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 15, 1990 applicable to all workers producing 120mm ammunition propellant at Hercules, Inc., Radford Army Ammunition Plant, Radford Virginia. The Certification was published in the **Federal Register** on June 26, 1990 (55 FR 26035). The Certification was corrected on April 17, 1991 because the Department inadvertently set the wrong impact date and left out the termination date.

At the request of the State Agency the Department reviewed its corrected certification for workers at the Radford Army Ammunition Plant of Hercules, Inc., and found that workers were covered who were not trade impacted. Accordingly, the Department is amending its certification to include only workers producing DIGL propellant for 120mm ammunition for the tank program. The amended notice applicable to the subject firm is hereby issued as follows: "All workers producing DIGL ammunition propellant at Hercules, Inc., Radford Army Ammunition Plant, Radford, Virginia who became totally or partially separated from employment on or after January 1, 1990 and before January 1, 1991 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, DC this 25th day of April 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-10364 Filed 5-1-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,537]

Megastar Apparel Group Distribution Center, Chester, SC; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 11, 1991 in response to a worker petition which was filed on behalf of workers at Magastar Apparel Group Distribution Center, Chester, South Carolina.

The petitioning group of workers is subject to an ongoing investigation for which a determination has not yet been issued (TA-W-25,508). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 24th day of April 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-10361 Filed 5-1-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,567]

St. Paul Sportwear, St. Paul, VA; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 18, 1991 in response to a worker petition which was filed on behalf of workers at St. Paul Sportswear, St. Paul, Virginia.

An active certification covering the petitioning group of workers remains in effect (TA-W-25,104). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 24th day of April 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-10362 Filed 5-1-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-22,071]

Southern Triangle Oil Co., Mt. Carmel, IL and Operating at Various Locations in the Following States: TA-W-22,071A Illinois, TA-W-22,071C Ohio, TA-W-22,071B Indiana, TA-W-22,071D West Virginia; Revised Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

The Department is revising its original certification issued on January 31, 1989 to restore certification coverage inadvertently removed as a result of the additional determination issued on March 1, 1991.

On March 1, 1991 the Department issued a revised certification on reconsideration covering additional workers under the retroactive provisions of the 1988 amendments to the Trade Act. The revised certification had a termination date of November 15, 1987 which inadvertently negated the coverage provided under the original certification, which had an impact date of November 15, 1987. This revised certification was published in the **Federal Register** on March 18, 1991 (56 FR 10575). Accordingly, the Department is revising the certification again by deleting the termination date of November 15, 1987.

The amended notice applicable to TA-W-22071 is hereby issued as follow: "All workers of Southern Triangle Oil Company, Mt. Carmel, Illinois and operating at various other locations in the States listed below who became totally or partially separated from employment on or after October 1, 1985 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

TA-W-22,071A Illinois
TA-W-22,071B Indiana
TA-W-22,071C Ohio.
TA-W-22,071D West Virginia

Signed at Washington, DC this 24th day of April 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-10358 Filed 5-1-91; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjstment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than May 13, 1991.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 13, 1991.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 22nd day of April 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
A.O. Smith Electrical Motors Div. (IBEW)	Mt. Sterling, KY	04/22/91	04/08/91	25,697	Motors.
Andritz Sprout-Bauer (Workers)	Muncy, PA	04/22/91	04/11/91	25,698	Food Processor.
Barclay Sportswear Inc. (Workers)	Waterville, NY	04/22/91	04/12/91	25,699	Sweaters.
Biltwell (ACTWU)	Salisbury, MO	04/22/91	04/09/91	25,700	Slacks.
Capitol Circuits Corp. Printer (Workers)	Boston, MA	04/22/91	04/11/91	25,701	Printers.
Capitol Circuits Corp., Westrex (Workers)	Falls River, MA	04/22/91	04/11/91	25,702	Perinters & Terminals.
CB North American (Workers)	Glens Falls, NY	04/22/91	03/27/91	25,703	Ski/Outerwear.
CB North America (Workers)	North Adams, MA	04/22/91	03/27/91	25,704	Ski/Outerwear.
Chicago Cutlery Co. (Workers)	New Hope, MN	04/22/91	04/12/91	25,705	Cutlery.
Durham Knitting Mills, Inc. (Workers)	Rutledge, TN	04/22/91	04/09/91	25,706	Apparel.
ELCO Processors, Inc. (UFCW)	Bronx, NY	04/22/91	04/10/91	25,707	Fur.
GE Government Comm. System Systems (Workers).	Camden, NJ	04/22/91	03/25/91	25,708	Communication.
Gray Envelope Mfg. (company)	Averel, NJ	04/22/91	04/10/91	25,709	Envelopes.
Hesteco (Workers)	Elizabethtown, PA	04/22/91	03/28/91	25,710	Sportswear.
Hurd Sales Co., Inc. (Workers)	Utica, NY	04/22/91	03/21/91	25,711	Shoes.
Leonard Electronics Products Co. (Workers)	Brownsville, TX	04/22/91	04/04/91	25,712	Components.
Lowrance Electronics (Workers)	Tulsa, OK	04/22/91	04/12/91	25,713	Sonar Equip.
Marlene Industries, Decaturville Sprts	Decaturville, TN	04/22/91	04/08/91	25,714	Sportswear.
Marlene Industries, Decaturville Sprts	Lexington, TN	04/22/91	04/08/91	25,715	Sportswear.
Marlene Industries, Trousdale Mfg.	Hartsville, TN	04/22/91	04/08/91	25,716	Sportswear.
Marnik Fashions (Workers)	Glassboro, NJ	04/22/91	04/02/91	25,717	Apparel.
N.R.M. Steelastic (Workers)	Akron, OH	04/22/91	04/02/91	25,718	AC/DC Panels.
OPTO Generic Devices, Inc. (Workers)	Van Hornesville, NY	04/22/91	04/12/91	25,719	Copy Machines.
P.I.E. Nationwide, Inc. (Workers)	Kansas City, MO	04/22/91	04/07/91	25,720	Auto Components.
Reading & Bates Drilling Co. (Workers)	Houston, TX	04/22/91	03/07/91	25,721	Oil & Gas.
Shelby Group Intl., Inc. (Workers)	Houlka, MS	04/22/91	04/09/91	25,722	Gloves.
Suitcraft Industries (Workers)	Rahway, NJ	04/22/91	04/06/91	25,723	Clothing.
Syntrex, Inc. (Workers)	Eatontown, NJ	04/22/91	04/05/91	25,724	Word Processors.
Twin Disc, Inc. (Workers)	Racine, WI	04/22/91	04/08/91	25,725	Auto Parts.
Unitog Inc (ACTWU)	Clinton, MO	04/22/91	04/09/91	25,726	Shirts.
Weather Tamer (Workers)	Columbia, TN	04/22/91	04/01/91	25,727	Outerwear.
Weyerhaeuser Co. (IWA)	North Bend, OR	04/22/91	04/08/91	25,728	Logs.

[FR Doc. 91-10359 Filed 5-1-91; 8:45 am]

BILLING CODE 4510-30-M

Job Training Partnership Act: Native American Programs' Advisory Committee; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, and section 401(h)(1) of the Job Training Partnership Act, as amended (29 U.S.C. 1671(h)(1)), notice is hereby given of a meeting of the Job Training Partnership Act Native American Programs' Advisory Committee.

Time and Date: The meeting will begin at 10 a.m. on May 21, 1991, and continue until close of business that day; and will reconvene at 8:30 a.m. on May 22, 1991, and adjourn at 12 p.m. that day. The final hour of the meeting on May 22 will be reserved for participation and presentation by members of the public.

Place: South A and B Meeting Rooms, Sheraton Spokane, North 322 Spokane Falls Court, Spokane, Washington.

Status: The meeting will be open to the public.

Matters to be Considered: The agenda will focus on feedback from the three subcommittees—Performance Standards, Economic Development and Long-Term Planning, and Policy Issuances and Technical Assistance and Training—in addition to a report from the Census Issues Work Group.

CONTACT PERSON FOR MORE INFORMATION: Paul A. Mayrand, Director, Office of Special Targeted Programs, Employment and Training Administration, United States Department of Labor, room N–4641, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202–535–0500 (this is not a toll-free number).

Signed at Washington, DC, 26th day of April, 1991.

Robert T. Jones

Assistant Secretary of Labor.

[FR Doc. 91–10356 Filed 5–1–91; 8:45 am]

BILLING CODE 4510–30–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. RM 90–7]

Registrability of Costume Designs

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of inquiry.

SUMMARY: The Copyright Office issues this Notice of Inquiry to advise the public that the Copyright Office is reviewing its practices regarding the registrability of three-dimensional garment or costume designs and to invite public comment, views, and information that will assist the Copyright Office in examining the bases on which copyright protection may inhere in such works. Such an examination may lead to a revison of Copyright Office practices regarding the registration of the three-dimensional aspects costume designs.

DATES: Initial comments should be received on or before July 1, 1991. Reply comments should be received on or before July 31, 1991.

ADDRESSES: Interested persons should submit ten copies of their written comments to the Office of the General Counsel, Copyright Office, Library of Congress, Department 17, Washington, DC 20540. Comments delivered by hand should be submitted to the Office of the Register of Copyrights, Copyright Office, James Madison Memorial Building, room 407, First Street and Independence Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20540. Telephone: (202) 707–8380.

SUPPLEMENTARY INFORMATION:

1. Background

Registration may be obtained for original pictorial, graphic, and sculptural works. Copyright Act of 1976, title 17 U.S.C. 102(a)(5), 408. The category of pictorial, graphic, and sculptural works includes works of artistic craftsmanship insofar as their form but not their mechanical or utilitarian aspects are concerned. The designs of useful articles are considered protectible pictorial, graphic, or sculptural works only if, and only to the extent that, such designs incorporate pictorial, graphic, or sculptural features that can be identified separately from, and can exist independently of, the utilitarian aspects of the article. 17 U.S.C. 101 (definition of "pictorial, graphic, and sculputral works").

The Copyright Act defines a "useful article" as "an article having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information." An article that is normally a part of a useful article is also considered a "useful article." *Id.*

The House Judiciary Committee report accompanying the 1976 Copyright Act explained that through the above definitions of protected subject matter Congress sought to "draw as clear a line as possible between copyrightable works of applied art and uncopyrightable works of industrial design." H.R. REP. NO. 94–1476, 94th Cong. 2d Sess. 55 (1976). The report provided further guidance in a lengthy but invaluable passage:

> A two-dimensional painting, drawing, or graphic work is still capable of being identified as such when it is printed on or applied to utilitarian articles such as textile fabrics, wallpaper, containers, and the like. The same is true when a statue or carving is used to embellish an industrial product or, as in the *Mazer* case, is incorporated into a product without losing its ability to exist independently as a work of art. On the other hand, although the shape of an industrial product may be aesthetically satisfying and valuable, the Committee's intention is not to offer it copyright protection under the bill. Unless the shape of an automobile, airplane, *ladies' dress*, food processor, television set, or any other industrial product contains some element that, *physically or conceptually*, can be identified as separable from the utilitarian aspects of that article, the design would not be copyrighted under the bill. The test of separability and independence from the 'utilitarian aspects of the article' does not depend upon the nature of the design—that is, even if the appearance of an article is determined by esthetic (as opposed to functional) considerations, only elements, if any, which can be identified separately from the useful article as such are copyrightable. *Id.*
>
> [Emphasis added.]

The Copyright Office has generally refused to register claims to copyright in the three-dimensional aspects of clothing or costume design on the ground that articles of clothing and costumes are useful articles that ordinarily contain no artistic sculpture separable from their overall utilitarian shape. Two dimensional design applied to the surface of the clothing may be registered, but this claim to copyright is generally made by the fabric producer rather than the garment or costume designer. Moreover, this claim to copyright is ordinarily made when the two-dimensional design is applied to the textile fabric and before the garment is cut from the fabric.

The 1976 House Report confirms that "ladies' dress" and other clothing cannot be protected by copyright merely on the ground that the appearance of the useful article is determined by esthetic considerations. Over the last few years, however, the Office registered a few narrowly drawn claims [1] in certain three-dimensional fanciful or animal-shaped items that can be worn. Some of these claims have been the subject of litigation.

In *National Theme Productions, Inc.* v. *Jerry B. Beck, Inc.*,[2] the court decided that the costumes before it contained separable artistic authorship sufficient to support a copyright. At the same time, the court acknowledged that the primary purpose of masquerade costumes was to permit the wearer to "masquerade" and that the costumes "lie on the margin of utility."

Recently, the Second Circuit Court of Appeals affirmed on other grounds a district court that held that copyrightable design requires artistic authorship unifluenced by functional considerations. *Whimsicality, Inc.* v. *Rubie's Costumes Co., Inc.*[3] The costumes were, according to this district court, "dominated by utilitarian concerns," with the result that there were no artistic elements apart from the utilitarian shape of the useful article.[4]

The Coppyright Act of 1976 accords no copyright protection to the overall shape of designs if the article has "an utilitarian function that is not merely to portray the appearance of the article or to convey information." [5] As confirmed in the Whimsicality case, the relevant inquiry is whether there is an intrinsic useful purpose, not merely a possible incidental useful purpose.

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[1] No claim, for instance, can be made on the functional design of clothing.

[2] 696 F. Supp. 1348 (S.D.Cal. 1988).

[3] 721 F. Supp. 1566 (E.D.NY. 1989), *aff'd*, 891 F.2d 452 (2d Cir. 1989).

[4] 721 F. Supp. at 1574.

[5] 17 U.S.C. 101 (definition of "useful article"). *Fabrica Inc.* v. *El Dorado Corp.*, *697 F.2d 890, 893 (9th Cir. 1983).*

Subsequently, the Third Circuit reverse a district court's finding that animal nose masks are uncopyrightable as useful articles.[6] The court of appeals found, instead, that the masks were not useful articles because the only function was simply to portray their appearance. Therefore, the novelty masks were excluded from the statutory defintion of useful articles. Similarly, the Eighth Circuit upheld copyright in animal bear claw slippers,[7] and a district court in New York upheld copyright in animal shaped children's backpacks,[8] before the Whimsicality case was decided.

Although not a costume design case, the Second Circuit's decision in *Carol Barnhart Inc.* v. *Economy Cover Corp.*,[9] represents an important interpretation of the separability test of the Copyright Act. The Carol Barnhart court denied copyright protection to life-size anatomically correct mannequins because the configurations were "inextricably intertwined with their function to display clothes, and thus the artistic features were inseparable from their utilitarian dimension."[10]

2. Policy Issues Relating to Registration of Costume Designs

In view of the recent case law affecting costume designs, the Copyright Office is reviewing its registration standards as applied to designs of garments and costumes. To maintain consistency with settled copyright principles, we will avoid adopting standards that take marketability, or aesthetic quality, into consideration.

To help us in developing our registration practices, the Office solicits general views about the correct interpretation of the Copyright Act in the case of three-dimensional design of garments and costumes. The Office specifically solicits the public's views and comments on the following:

1. Are all costumes useful articles? If not, which costumes are not useful articles and how can the Copyright Office distinguish between those that are and those that are not useful? Can the Copyright Office register masks of a fanciful character but not a full body costume of the same character? Does it matter if the costume is intended to be worn over clothing?

2. Can a line be drawn by the Copyright Office permitting registration of three-dimensional aspects of some costume designs, perhaps in the case of highly fanciful or animal-like designs, while denying registration of designs of clothing, theatrical costumes, and nonfanciful costumes?

3. If certain three-dimensional design elements of garments or costumes should be protected, what standards should be applied in determining the copyrightability of these elements. How should the Copyright Office apply the separability test of the definition of pictorial, graphic, or sculptural works in the case of garment or costume designs.

4. Does the intention of the artist or designer have any relevance in determining whether a costume contains aesthetic features separate from the functional purpose?

Dated: April 16, 1991.

Ralph Oman,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 91-10310 Filed 5-1-91; 8:45 am]

BILLING CODE 1410-07-M

[6] *Masquerade Novelty, Inc.* v. *Unique Industries, Inc., 912 F.2d 663 (3rd Cir. 1990).*

[7] *Animal Fair, Inc.* v. *Amfesco Industries, Inc.*, 620 F. Supp. 175 (D. Minn. 1985), *aff'd mem.* 794 F.2d 678 (8th Cir. 1986).

[8] *Act Young Imports, Inc.* v. *Band E Sales Co.*, 673 F. Supp. 672 (S.D.N.Y. 1987).

[9] 773 F.2d 411 (2d Cir. 1985).

[10] 733 F.2d at 41

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[91-35]

NASA Advisory Countil (NAC), Space Science and Applications Advisory Committee (SSAAC), Solar System Exploration Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee, Solar System Exploration Subcommittee.

DATES: May 20, 1991, 8:30 a.m. to 5:30 p.m.; May 21, 1991, 8:30 a.m. to Noon.

ADDRESSES: National Aeronautics and Space Administration, room 226, 600 Independence Avenue, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Wesley Huntress, Code SL, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1588).

SUPPLEMENTARY INFORMATION: The Space Science and Applications Advisory Committee consults with and advises the NASA Office of Space Science and Applications (OSSA) on long-range plans for, work in progress on, and accomplishments of NASA's Space Science and Applications programs. The Solar System Exploration Subcommittee (SSES) provides advice to the Solar System Exploration Division concerning long-range planning in solar system exploration. The SSES will meet to discuss OSSA and exploration strategic planning, and receive reports from the SSES working groups. The Subcommittee is chaired by Dr. Jonathan Lunine and is composed of 25 members. The meeting will be open to the public up to the seating capacity of the room (approximately 50 persons including members of the Subcommittee). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

TYPE OF MEETING: Open.

Agenda:

Monday, May 20

8:30 a.m.—Opening Remarks.
8:45 a.m.—Exploration Outreach Synthesis Group Report.
9:30 a.m.—SSES Working Group Reports.
1:30 p.m.—Solar System Exploration Strategic Plan.
4:30 p.m.—Subcommittee Assignments.
5:30 p.m.—Adjourn.

Tuesday, May 21

8:30 a.m.—Program Status Update.
9:30 a.m.—Report of the SSES Instrument Group.
10 a.m.—Technology Strategic Planning.
Noon—Adjourn.

Dated: April 26, 1991.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 91-10402 Filed 5-1-91; 8:45 am]

BILLING CODE 7510-01-M

[91-36]

NASA Wage Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Wage Committee.

DATES: June 24, 1991, 1 p.m. to 3:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, room 5026, Federal Building 6, 400 Maryland Avenue, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. John N. Remissong, Code NHM, National Aeronautics and Space

Administration, Washington, DC 20546 (202/453–2593).

SUPPLEMENTARY INFORMATION: The Committee's primary responsibility is to consider and make recommendations to the NASA Assistant Associate Administrator for Human Resources, on all matters involved in the development and authorization of a Wage Schedule for the Cleveland, Ohio, wage area, pursuant to Public Law 92–392.

TYPE OF MEETING: Closed.

PURPOSE OF MEETING: The Committee will consider wage survey data, local reports, recommendations, and statistical analyses and proposed wage schedule review therefrom.

Dated: April 26, 1991.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 91–10403 Filed 5–1–91; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL COMMISSION ON ACQUIRED IMMUNE DEFICIENCY SYNDROME

Meeting

AGENCY: National Commission on Acquired Immune Deficiency Syndrome (AIDS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463 as amended, the National Commission on AIDS announces a small group meeting of Commission members and staff.

DATE AND TIME: Saturday, May 18, 1991, 9 a.m. to 12 noon.

PLACE: San Francisco Hilton on Hilton Square, 333 O'Farrell Street, San Francisco, California 94102, (415) 771–1400.

TYPE OF MEETING: Open.

FOR FURTHER INFORMATION CONTACT: Maureen Byrnes, Executive Director, The National Commission on AIDS, 1730 K Street, NW., suite 815, Washington, DC 20006 (202) 254–5125. Records shall be kept of all Commission proceedings and shall be available for public inspection at this address.

AGENDA: Commission members and staff will meet to discuss the scientific and regulatory aspects of HIV-related research and drug development.

Interpreting services are available for deaf people. Please call out TDD number (202) 254–3816 to request services no later than May 9, 1991.

Dated: April 26, 1991.

Maureen Byrnes,

Executive Director.

[FR Doc. 91–10357 Filed 5–1–91; 8:45 am]

BILLING CODE 6820–CN–M

NATIONAL COMMISSION FOR EMPLOYMENT POLICY

Meeting

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (P.L. 92–463; 86 Stat. 770) notice is hereby given of a public meeting and a closed executive session (pursuant to 5 U.S.C. APP. I, Sections 10(d) and 5 U.S.C. Section 552b(c)). It has been determined that sensitive personal and personnel matters concerning staffing at the Commission will be discussed. The meeting is to be held in Ballroom North, located on the First Floor of the Annapolis Marriott, Annapolis, MD.

DATES: Monday May 20, 1991, 10 a.m.–3 p.m.; Executive Session (closed), 3:15 p.m.–5 p.m.; Tuesday May 21, 1991, 8:30 a.m.–12:30 p.m. Meeting and site visit will be held on Tuesday.

STATUS: The meeting is to be open to the public.

MATTERS TO BE DISCUSSED: The purpose of this public meeting is to enable the Commission members to discuss progress on the research agenda, findings received from prior hearings, and budget and administrative matters.

FOR FURTHER INFORMATION CONTACT: Barbara C. McQuown, Director, National Commission for Employment Policy, 1522 K Street, NW., suite 300, Washington, DC 20005, (202) 724–1545.

SUPPLEMENTARY INFORMATION: The National Commission for Employment Policy was established pursuant to Title IV–F of the Job Training Partnership Act (Pub. L. 97–300). The Act charges the Commission with the broad responsibility of advising the President, and the Congress on national employment issues. Handicapped individuals wishing to attend should contact the Commission so that appropriate accommodations can be made. Minutes of the meeting will be available for public inspection at the Commission's headquarters, 1522 K Street, NW., suite 300, Washington, DC 20005.

Signed at Washington, DC, this 26th day of April, 1991.

Barbara C. McQuown,

Director, National Commission for Employment Policy.

[FR Doc. 91–10363 Filed 5–1–91; 8:45 am]

BILLING CODE 4510–23–M

OFFICE OF MANAGEMENT AND BUDGET

Transmittal of Within-Session Sequester Report for Fiscal Year 1991 to the President and Congress

April 26, 1991.

Pursuant to the Omnibus Budget Reconciliation Act of 1990, sections 251 and 254, the Office of Management and Budget hereby provides notice that it has submitted a Within-Session Sequester Report for Fiscal Year 1991 to the President, the Speaker of the House of Representatives, and the President of the Senate.

Darrell A. Johnson,

Assistant Director for Administration.

[FR Doc. 91–10417 Filed 5–1–91; 8:45 am]

BILLING CODE 3110–01–M

OVERSIGHT BOARD

Oversight Board Meeting

AGENCY: Oversight Board.

ACTION: Meeting.

DATES: Wednesday, May 15, 1991, 12:30 p.m..

ADDRESSES: Office of Thrift Supervision, 1700 G Street, NW., Washington, DC, Amphitheater, 2nd floor.

FOR FURTHER INFORMATION CONTACT: Brian Harrington, Press Officer, Office of Public Affairs, 1777 F Street, NW., Washington, DC 20232, (202) 786–9672.

SUPPLEMENTARY INFORMATION:

Discussion Agenda:

- Thrift Industry Conditions and Trends.
- National Advisory Board Recommendations.
- Other agenda items to be determined.
- Closed session to follow.

Dated: April 29, 1991.

Jill Nevius,

Committee Management Officer.

[FR Doc. 91–10426 Filed 5–1–91; 8:45 am]

BILLING CODE 2222–01–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272-2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Public Reference Branch, Washington, DC 20549-1002.

Rev., Form S-1, File No. 270-58
Rev., Form S-18, File No. 270-119

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval proposed revisions to forms S-1 and S-18, used to register securities pursuant to the Securities Act of 1933. The proposed revisions would not affect the number of filings on either form but may result in a slight increase in the burden hours associated with the filing of form S-18.

Currently, approximately, 1,416 form S-1 registration statements are filed each year and an estimated average of 1,284 burden hours are required per form. Approximately 632 form S-18 registration statements are filed each year and an estimated 1,280 burden hours are required per form. The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget (Paperwork Reduction Project 3235-0065, and 0098), New Executive Office Building, room 3228, Washington, DC 20503.

Dated: April 15, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-10397 Filed 5-1-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29126; File No. SR-Amex-90-32]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to its Procedures for Handling and Executing Market-On-Close Orders

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 18, 1991, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the revised proposed rule change as described in items I, II and III below, which Items have been prepared by the self-regulatory organization.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend its rule 109 to make the procedures currently used to execute market-on-close ("MOC") orders [2] in certain stocks on expiration Fridays applicable to all MOC orders on every trading day.[3] The Amex has requested that the proposal be effective for a one year pilot period.[4]

II. Self Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] The original proposed rule change, which was filed with the Commission on December 11, 1990, was revised by the Exchange to include a more detailed description of the proposed procedures for handling market-on-close orders. *See* letter from Geraldine M. Brindisi, Corporate Secretary, Amex, to Mary Revell, Esq., Branch Chief, SEC, dated April 16, 1991.

[2] An MOC order is a market order that is to be executed in the stock's closing transaction.

[3] *See* exhibit A to File No. SR-Amex-90-32 for the exact language of the text of the proposed rule change.

[4] *See* letter from Claire P. McGrath, Senior Counsel, Amex to Mary Revell, Branch Chief, Division of Market Regulation, SEC, dated January 3, 1991.

A. Self Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Exchange proposes to amend its rule 109 to extend to all stocks, every day, the procedure it currently uses to execute MOC orders in certain stocks on expiration Fridays. In 1987, Exchange Rule 109 was amended to implement a specific procedure for handling MOC orders on expiration Fridays in Amex-listed stocks that are components of a stock index on which an option and/or futures contract is traded (*e.g.*, the Standard & Poor's 500 Stock Index).[5] Many trading strategies involving such stock indices require the unwinding of positions in the component stocks at the closing price on expiration Friday, since this is the price upon which index options and some future contracts base their settlement.

On a daily basis, the procedure currently used for handling MOC orders requires in many cases—indeed in all cases when the closing spread is no wider than the minimum fractional change in which the stock in question trades—that MOC orders to buy be executed against the offer, and MOC orders to sell be executed against the bid, assuring that one type of order will *not* receive the final closing price.

The Exchange has become aware that a number of trading techniques and strategies used by institutional investors have been developed which call for a single closing price on a daily basis, not just on expiration Friday.[6] Accordingly, the Exchange proposes to amend Rule 109 to extend to all stocks, every day, the procedure now used to handle MOC orders only in select stocks and only on expiration Fridays.

The proposed procedure provides that all buy and sell MOC orders be paired-off against each other, and if there is an imbalance, that the imbalance be executed against the closing bid if it is on the sell side and against the closing offer if it is on the buy side. The paired-off orders are executed at the same price as the imbalance. If there is no

[5] *See* Securities Exchange Act Release No. 24616 (June 19, 1987), 52 FR 23909 (Commission order granting accelerated approval to File No. SR-Amex-87-14).

[6] The Commission approved a New York Stock Exchange, Inc. ("NYSE") proposal to amend its procedures for handling and executing MOC orders [*see* Securities Exchange Act Release No. 28167 (June 29, 1990), 55 FR 28117 (order approving File No. SR-NYSE-89-10 for a one year pilot period)]. The Amex proposal to amend its MOC procedures set forth herein is similar in many respects to the NYSE's proposal.

imbalance, the paired-off orders are executed at the last sale on the Exchange prior to the close of trading in that stock. Thus, the procedure assures that all MOC orders in a particular stock will be executed at the same price. In addition, those orders that are paired-off in implementing the procedure are reported as "stopped stock," so that customers with unexecuted limit orders on the specialist's book will know that the MOC transaction was executed outside the regular auction market, and that for this reason their orders may not have participated.

(2) Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest.

B. Self Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-90-32 and should be submitted by Mary 23, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 24, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-91-1030 Filed 5-1-91; 8:45 am]

BILLING CODE 801-01-M

[Release No. 34-29127; File No. SR-DTC-91-5)

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to DTC's Receiver-Authorized Delivery Facility

April 24, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on April 11, 1991, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which Items have been prepared by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of a limited revision of the Receiver-Authorized Delivery ("RAD") facility of DTC's Same-Day Funds Settlement ("SDFS") system. As a result of the subject revision, all valued deliveries of commercial paper ("CP") attempted during the final half hour prior to DTC's cutoff time for such deliveries would no longer be subjected programmatically to receiver authorization before being acted upon by DTC.

[1] 15 U.S.C. 78s(b)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DTC's SDFS system, for which a number of securities, including CP, are eligible, is a tightly controlled system requiring receivers of attempted securities deliveries to have collateral in their accounts adequate to support settlement debits that would result from the deliveries. In order to reduce reclamations [2] of erroneous deliveries and to limit a receiving participant's exposure to the possibility that its reclamation might be blocked by system controls on the deliverer's account, the SDFS system includes the RAD facility.[3] RAD provides a receiving participant with the option of authorizing deliver orders [4] and payment orders [5] before they are posted to its account. The RAD facility enables each SDFS participant that is a potential receiver to consider and approve or cancel incoming securities deliveries and payment orders above a bilateral dollar limit it selects for each other participant. Additionally, the SDFS system itself programmatically steers certain transactions into the RAD facility for receiving participant consideration. These include substantially overvalued CP deliveries,[6]

[2] A reclamation is the return of securities from the receiving party to the delivering party.

[3] *See* Securities Exchange Act Release No. 25836 (July 6, 1988), 53 FR 26698 (notice of filing and immediate effectiveness of the RAD facility).

[4] A delivery order is an institution from a participant to DTC directing DTC to deliver securities from the instructing participant's account to the account of another participant.

[5] A payment order is an instruction from a participant to DTC directing DTC to credit the account of the instructing participant and debit the account of another participant.

[6] DTC's criteria for deeming a valued delivery of CP to be overvalued are based upon (1) the difference between the settlement value and the fair market value of the CP being delivered ("settlement difference") and (2) the relationship between the

Continued

payment orders over $50,000, substantially undervalued and unvalued (*i.e.*, "free") CP deliveries,[7] and all valued transactions entered into the SDFS system during the last half hour, 2:30 p.m. to 3 p.m. eastern time, of the participant data entry day.

Under the proposed rule change, DTC would discontinue programmatically steering valued CP deliveries that are neither substantially overvalued nor substantially undervalued into the RAD facility during the last half hour of the data entry day. CP deliveries will continue to be subject to all other applications of the RAD facility described above. Further, all valued deliveries of SDFS securities other than CP attempted during the final half hour of the data entry day will continue to be programmatically steered into the RAD facility.

As DTC's CP program, inaugurated October 5, 1990, continues to grow, the volume of CP deliveries entered into the SDFS system between 2:30 p.m. and 3 p.m. will also continue to grow. If all CP deliveries entered between 2:30 p.m. and 3 p.m. were to continue to be programmatically steered into the RAD facility, the mechanics of receiver authorization alone would significantly increase the possibility that large numbers of CP transactions that participants expected to settle through DTC could not. This would introduce inefficiencies and the possibility of gridlock into DTC's CP program.

settlement difference and the fair market value of the CP. The criteria are as follows:

(1) If the settlement difference of a valued delivery is less than $50,000, DTC will not automatically send this delivery through RAD;

(2) If the settlement difference of a valued delivery is between $50,000 and $150,000 and if the settlement difference is equal to or greater than 50% of the fair market value of the CP, DTC will automatically send this delivery through RAD;

(3) If the settlement difference of a valued delivery is between $150,000 and $250,000 and the settlement difference is equal to or greater than 25% of the fair market value of the CP, DTC will automatically send this delivery through RAD;

(4) If the settlement difference of a valued delivery is between $250,000 and $500,000 and the settlement difference is equal to or greater than 10% of the fair market value of the CP, DTC will automatically send this delivery through RAD; and

(5) If the settlement difference of a valued delivery is over $500,000 and the settlement difference is equal to or greater than 3% of the fair market value of the CP, DTC will automatically send this delivery through RAD.

Telephone conversation between Richard B. Nesson, General Counsel, DTC, and Ross Pazzol, Staff Attorney, Division of Market Regulation, Commission, (April 3, 1991).

[7] DTC will deem a valued delivery of CP to be undervalued when its settlement value is less than 90% of its fair market value. *ID.*

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

DTC's CP program was developed in close consultation with the CP Task Force established by the Public Securities Association's Money Market Committee. The CP Task Force, which is composed of representatives of CP broker-dealers, New York Clearing House banks, banks headquartered outside New York, and CP issuers, has continued to meet regularly with DTC to help monitor implementation of the program. The CP Task Force has strongly urged DTC to make the subject revision to the RAD facility. The CP Task Force has advised DTC that because CP transactions tend to be uncomplicated, few deliveries are likely to be erroneous. The CP Task Force also has represented to DTC that in the unlikely event of an erroneous delivery that cannot be reclaimed by 3 p.m., participants in the CP market would be willing to cooperate with one another by accepting free reclamations up to the 6:15 p.m. SDFS free transaction deadline with money settlement taking place outside DTC. The CP Task Force has concluded that the potential benefits of programmatically subjecting to receiver authorization all valued CP deliveries entered during the last half hour of processing are far outweighed by the resulting inefficiencies and risks.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) (A) of the Act and paragraph (e) of rule 19–4 [8] because it constitutes a stated policy with respect to the administration of an existing rule of DTC. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[8] 17 CFR 240.19b–4.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, at the address above. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to File Number SR–DTC–91–5 and should be submitted by May 23, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–10392 Filed 5–1–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–29129; File No. SR–NSCC–90–15]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving a Proposed Rule Change Regarding a Modification to its Fund/SERV Rules

April 24, 1991.

On August 16, 1990, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. NSCC–90–15) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The purpose of the proposed rule change is to enable NSCC to delete pending items from Fund/SERV, with the exception of ACAT–Fund/SERV items,[2] upon the withdrawal by a member from participation in Fund/SERV when such member continues as an NSCC member or is merged into or

[1] 15 U.S.C. 78s(b)(1).

[2] The Automated Customer Account Transfer Service ("ACAT") enables an NSCC member to transfer customer accounts to another member. The ACAT–Fund/SERV link is used to expedite the transfer of a customer's mutual fund account to another member.

acquired by another member which is not a participant in Fund/SERV. On April 5, 1991, NSCC amended the proposed rule change to clarify that NSCC will not delete pending items earlier than five business days following notification to members of the withdrawing member's intention to withdraw from Fund/SERV.[3] Notice of the proposed rule change appeared in the Federal Register on September 25, 1990.[4] No comments were received regarding the proposed rule change. This order approves the proposed rule change as amended.

I. Description of the Proposal

This proposal amends NSCC's rules to enable NSCC to delete a member's confirmed pending orders from the Fund/SERV system, with the exception of ACAT-Fund/SERV items, after the withdrawal of the member from participation in Fund/SERV when that member continues as an NSCC member or is merged into or acquired by another member.[5] NSCC will work with the withdrawing settling member to establish a date for deleting pending items to allow members adequate time in which to complete their pending transactions. NSCC, however, will not delete pending items prior to five business days following notification to members of the withdrawing member's intention to withdraw form Fund/SERV.[6]

Under NSCC's Fund/SERV procedures, redemption orders of physical or book-entry shares registered in the customer's name pend in the Fund/SERV system until the mutual fund receives the physical shares or the proper instructions from the customer. Upon receipt of the physical shares or the proper instructions, the mutual fund submits to NSCC a release to settlement so that redemptions of physical shares or book shares registered in the customer name can settle the following business day. The proposed rule change will enable NSCC to delete a settling member's redemption orders for which releases to settlement have not been received from the mutual fund when such member withdraws from participation in Fund/SERV.

Exchange orders also pend in the Fund/SERV system until the mutual fund processor or mutual fund confirms or rejects the orders.[7] Because exchange orders are predicated on the fact that the customer has securities in one fund and is seeking to switch to another fund within the same family of funds, NSCC pends the transaction until the transaction is confirmed or rejected by the mutual fund or the mutual fund processor. The proposal will allow NSCC to delete pending exchange orders when a member withdraws from participation in Fund/SERV.

II. Discussion

The Commission believes that NSCC's proposed rule change is consistent with section 17A of the Act and, specifically, with section 17A(b)(3)(A) and (F).[8] Sections 17(b)(3)(A) and (F) of the Act provide that a clearing agency be organized and its rules be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds in its custody or control or for which it is responsible. The Commission believes that NSCC's proposal furthers this goal by reducing the costs associated with clearance and settlement in NSCC's Fund/SERV system.

NSCC's proposed rule change will enable NSCC to delete a member's confirmed pending items from Fund/SERV upon the member's withdrawal from Fund/SERV. This will reduce NSCC's costs associated with issuing reminders of pending confirmed orders to members that no longer participate in the Fund/SERV system. As with deletions of other orders in the Fund/SERV system, NSCC's rules hold the two parties to the transaction rsponsible for completion of pending transactions upon a member's withdrawal from participation in Fund/SERV. Deletion of these pending transactions between a member and a fund member or mutual fund processor does not change this obligation.

NSCC will not delete pending items prior to five business days following notification to members of the withdrawing member's intention to withdraw from Fund/SERV. In addition, NSCC has stated that it will work with the withdrawing settling member to establish a date for deleting pening items to allow members adequate time in which to complete their pending transactions. Thus the Commission believes that the proposal adequately balances the need to provide withdrawing settling members and mutual funds and mutual fund processors prompt and accurate clearance and settlement of Fund/SERV transactions and the cost savings from deleting such pending transactions from the Fund/SERV system.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the requirements of the Act, particularly with section 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, prusuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-NSCC-90-15) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-10391 Filed 5-1-91; 8:45 am]

BILLING CODE 8010-01-M

[3] *See* letter from Karen Saperstein, Associate General Counsel, NSCC, to Jonathan Kallman, Assistant Director, Division of Market Regulation, Commission, dated April 5, 1991.

[4] Securities Exchange Act Release No. 28438 (September 14, 1990), 55 FR 39222.

[5] In 1986, NSCC implemented Fund/SERV to provide a centralized order entry, confirmatin and settlement system for mutual funds. Securities Exchange Act Release No. 22928 (February 20, 1986), 51 FR 6954; Securities Exchange Act Release No. 25146 (November 20, 1987), 52 FR 45418.

[6] NSCC Rules, R. 52 sec. 17.

[7] An exchange order is an order which enables the settling member to change funds within a family of funds.

[8] 15 U.S.C. 78q-1(b)(3)(A) and (F).

[Release No. 34-29130; File No. SR-NASD-91-04]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Data Services and Related Subscriber Fees

On January 22, 1991, the National Association of Securities Dealers, Inc. ("NASD") submitted to the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR-NASD-91-04), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] to expand service offerings and establish subscriber fees for receipt of broadcast feeds of either NASDAQ/National Market System ("NASDAQ/NMS") last sale data or National Quotation Data Service ("NQDS") quotation information into their internal processing systems for development of analytic information based upon the transaction or quotation data received. The proposed rule change was noticed in the Federal Register for public comment.[2] No comments were received in response to this proposal. This order approves the proposed amendment.

[1] 15 USC 78s(b)(1) (1982).

[2] *See* Securities Exchange Act Release No. 28947 (March 6, 1991), 56 FR 10933.

This proposed rule change would expand service offerings and establish a monthly charge of $500 for the receipt of a data stream (*i.e.*, a broadcast stream of information from the NASD's central processor) consisting of either NASDAQ/NMS last sale information or NQDS quotation information. The uses made of data stream information and the manner of their communication are distinguishable from vendor feeds provided by the NASD to support terminal devices capable of displaying real-time market data on demand or in a dynamic update mode. More specifically, data streams covered by this filing would be used to perform a variety of computerized analyses and computations that may be integral to a subscriber's business functions. These analyses/computations may be disseminated in some graphic or other derivative form via a screen display or in a hard copy format, depending upon the subscriber's business needs. As such, the NASD believes that pricing of data streams based upon a flat fee is more appropriate than the device-based charges levied on subscribers receiving real-time access to NASDAQ/NMS last sale and NQDS quotation information solely via screen displays. Approximately 30 subscribers are interested in receiving data streams of either NASDAQ/NMS last sale information or NQDS quotation information to perform proprietary analytics. The NASD intends to furnish the requested data streams subject to a subscriber's payment of the fees set forth in the filing.

The Commission has determined that it is appropriate to approve the NASD's proposed rule change because the Commission believes it is consistent with sections 11A(c)(1),[3] 15A(b) (5), (6) and (9).[4] The NASD collects and disseminates an array of information including market makers' quotations. The NASD's distribution of such information, especially the terms under which it is distributed to different classes of users, must be guided by certain principles set forth in section 11A(c)(1). That section requires prompt, accurate, reliable and fair collection, processing, distribution and publication of information,[5] and that all securities information processors may obtain such information on fair and reasonable terms,[6] which are not unreasonably discriminatory.[7] In addition, section 15A(b)(5) requires that the NASD's rules provide an equitable allocation of reasonable charges among members for the use of any facility or system that the NASD operates. Section 15A(b)(6) requires, among other things, that the NASD's rules be designed to promote just and equitable principles of trade, to facilitate transactions in securities, to protect investors and the public interest; and that the NASD's rules not be designed to permit unfair discrimination between customers, brokers or dealers. Further, section 15A(b)(9) requires that the NASD rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Based on the Commission's review of the NASD's submission, the Commission finds that the flat fee of $500 per month for the data streams is a reasonable charge that provides an equitable allocation among users. Thus, the Commission believes that it is appropriate to approve the proposed rule change.

It is therefore ordered, pursuant to section 19(b)(2) of the Act that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Dated: April 25, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-10393 Filed 5-1-91; 8:45 am]

BILLING CODE 8010-01-M

[3] 15 USC 78k-1 (1982).

[4] 15 USC 78o-3 (1982).

[5] Section 11A(c)(1)(B).

[6] Section 11A(c)(1)(C).

[7] Section 11A(c)(1)(D).

[8] 17 CFR 200.30-3(a)(12).

[Release No. 34-29128; File No. SR-PHLX 90-28]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Partially Approving Proposed Rule Change Relating to Registered Options Traders Entering Orders for Execution From On-Floor and Off-Floor Locations

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change which, among other things, would clarify an Exchange Options Floor Advice Procedure ("OFPA" or "Procedure") relating to Registered Options Traders ("ROTs") entering orders from on-floor and off-floor for execution on the Exchange. The proposal was published for comment in the **Federal Register.**[1] The Commission did not receive any comments on the proposal. The Commission is approving the remaining portion of the proposal as described below.[2]

The proposal conforms OFPA B-4: Trading from Off-Floor [3] with recently approved amendments to the Exchange's parity and priority rules.[4] Those amendments require that an equity or equity index options order of a controlled account must yield priority to customer orders, except that an ROT closing order executed in person is not required to yield priority to customer orders.[5] Moreover, the PHLX amendments provide that controlled account orders are not required to yield priority to other controlled account orders with one exception. Specifically, PHLX provides that when a closing ROT order to be executed in person and another controlled account order are established in the trading crowd at the same price and time, and, thereafter, a customer order is established at that price, then the controlled account order must yield to the customer order while the closing order of a ROT trading in person does not have to so yield. PHLX specialist accounts, however, because of the market making responsibilities imposed on specialists, will continue not to be subject to these particular priority and parity requirements.[6]

The proposal makes several changes to OFPA B-4, which, with one exception, do not change the substance of the Procedure. First, the proposal substantively amends the proposal by stating that an ROT who enters an order from off the floor must advise the person receiving the order that it is an order for

[1] Securities Exchange Act Release No. 28565 (October 22, 1990) 55 FR 43428.

[2] The proposal also contained changes relating to an OFPA regarding changes or corrections to material terms of a cleared options trade. That portion of the proposal was approved in Securities Exchange Act Release No. 28834 (January 29, 1991), 56 FR 4885.

[3] Under the proposal, the title of OFPA B-4 would become "PHLX ROTs Entering Orders from On-Floor and Off-Floor for Execution on the Exchange."

[4] In general, the priority and parity rules provide that an order to buy or sell on behalf of a customer will be executed before a member's order to buy or sell at the same price, even if the member's order was placed before the non-member's order.

[5] PHLX classifies orders as either from a customer account or a controlled account for purposes of its equity and equity index option priority and parity rules. A controlled account includes any account controlled by or under common control of a member broker-dealer.

[6] For more detail regarding the recent changes to the priority and parity rules, *see* Securities Exchange Act Release Nos. 29065 (April 10, 1991), 56 FR 15394; 28934 (March 4, 1991), 56 FR 10005.

an ROT and must state whether the order is opening or closing and whether it is for a customer or market maker account. Second, the proposal continues to state that an ROT may enter from on the floor or off the floor opening or closing orders for his customer account. Third, the proposal still provides that an ROT may cancel from off the floor opening or closing orders for his market maker or customer accounts but if he wishes to effect a change in the terms of an opening order (e.g., security, price, volume, series, class or contingencies) from off the floor such changed order must be executed in his customer account. Finally, the proposal makes numerous non-substantive grammatical changes to clarify the Procedure.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular the requirements of sections 6 and 11(a). Specifically, the proposed rule change is designed to provide procedures, that along with other OFPAs, will ensure the integrity of Exchange rules regarding priority and parity. In addition, the proposal will enhance the ability of public customer orders to receive a timely execution and could promote greater individual investor confidence in the PHLX options market.

Finally, the Commission believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices. Specifically, the proposal requires that an ROT who enters an order from off the floor must advise the person receiving the order that it is an order for an ROT and whether it is opening or closing and whether it is for the ROT's customer or market maker account. This will assist the Exchange in ensuring that public customer options orders are accorded priority over most orders on behalf of PHLX members as provided for by the Exchange's rules.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR-PHLX-90-28) is approved with respect to the portion regarding OFPA B-4.

For the Commission, by the Division of Market Regulation, Pursuant to delegated authority.[8]

Dated April 24, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-10394 Filed 5-1-91; 8:45 am]

BILLING CODE 8010-01-M

[7] 15 U.S.C. 78s(b)(2) (1982).

[8] 17 CFR 200.30-3(a)(12) (1989).

[Rel. No. IC-18113; 811-3312]

Tower Series Funds; Application

April 25, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: Tower Series Funds.

RELEVANT 1940 ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 1, 1990, and amended on January 28, 1991, and on April 25, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 20, 1991, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 429 North Pennsylvania Street, Indianapolis, IN 46204.

FOR FURTHER INFORMATION CONTACT: Barbara Chretien-Dar, Staff Attorney, at (202) 272-3022, or Stephanie M. Monaco, Branch Chief, at (202) 272-3030 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. According to SEC records, Tower Series Funds, an open-end investment company organized as a Kentucky business trust, registered under the 1940 Act on November 5, 1981. On the same date, it filed a registration statement with respect to an indefinite number of shares under the Securities Act of 1933, which registration statement was declared effective on May 20, 1982. The securities registered consisted of two classes: Equity Income Series [1] and Bond Series.

2. On October 26, 1989, applicant's board of trustees recommended that the applicant be dissolved after having considered the difficulties associated with applicant's small asset base, such as meeting redemption requests and maintaining an efficient expense ratio. At October 31, 1989, applicant had aggregate net assets of $3,681,814 with 492,726.43 shares outstanding. In a notice dated January 10, 1990, applicant informed shareholders of the board of trustees' recommendation and on January 30, 1990 sent shareholders notice of a special shareholders meeting to be held February 12, 1990. Applicant had experienced massive redemptions and was left with only 40 shareholders. Unified Management Corporation, applicant's transfer agent and administrator, was the majority shareholder and the only shareholder present at the special meeting at which it approved the dissolution of applicant.

3. On February 13, 1990, applicant liquidated its portfolio and made a liquidating distribution of $188,846 to shareholders at their relative net asset value per share. Liquidation expenses, including transfer agency, accounting, and legal fees, totalled $8,000 and were borne by the applicant.

4. Applicant has filed articles of dissolution with the state of Kentucky and has no other assets or liabilities. Applicant is not a party to any litigation or administrative proceedings. Applicant has no remaining shareholders and is not now engaged, nor proposes to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-10395 Filed 5-1-91; 8:45 am]

BILLING CODE 8010-01-M

[1] In 1989 the Equity Income Series merged with Unified Mutual Shares, Inc. which subsequently merged with Unified Mutual Shares, a series of Unified Funds. Unified Mutual Shares, Inc. has since deregistered under the 1940 Act. See Investment Company Act Release No. 18037 (March 13, 1991).

DEPARTMENT OF STATE

[Public Notice 1383]

Study Group 7 of the U.S. Organization International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 7 (formerly Study Groups 2 & 7) of the U.S. Organization for the International Radio Consultative Committee (CCIR) will hold an open meeting June 7, 1991 at NASA Headquarters, 600 Independence Avenue, SW., Washington, DC in room 521J commencing at 10 a.m.

Study Group 7 deals with matters relating to the space research systems and standard frequency and time systems. The purpose of the meeting is to review the Report of the recently completed meeting of Joint Interim Working Party WARC–92 and develop 1991 work plans for each of the Working Parties in Study Group 7.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Request for further information should be directed to Mr. Rodger Andrews, ARC Professional Services Group, Herndon, Virginia 22070, phone (703) 834–5600.

Dated: April 17, 1990.

Warren G. Richards,

Chairman, U.S. CCIR National Committee.

[FR Doc. 91–10378 Filed 5–1–91; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice 1382]

United States Organization for the International Telegraph and Telephone Consultative Committee (CCITT) Study Group C Meeting

The Department of State announces that Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on June 3, 1991 at the Newark Airport Marriott Hotel, Newark International Airport, Newark, New Jersey 07114. The room will be posted in the lobby. The meeting will begin at 9:30 a.m. and end at 4 p.m.

The agenda for the June 3rd meeting will include consideration of optical fiber system issues in preparation of the CCITT SG XV meeting in Geneva, Switzerland beginning November 11, 1991. Other matters relevant to the competence of Study Group C may be raised and considered.

Members of the general public may attend the meeting and join in the discussion subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. Prior to the meeting, persons who plan to attend should so advise Ellen Bradley on (908) 234–8624.

Dated April 22, 1991.

Earl S. Barbely,

Director, Telecommunications and Information Standards, Chairman U.S. CCITT, National Committee.

[FR Doc. 91–10379 Filed 5–1–91; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Index of Administrator's Decisions and Orders in Civil Penalty Actions; Publication

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of publication.

SUMMARY: This notice constitutes the required quarterly publication of an index of the Administrator's decisions and orders in civil penalty cases. The FAA is publishing an index by order number, a subject-matter index, and case digests that contain identifying information about the final decisions and orders issued by the Administrator. These indexes and digests will increase the public's awareness of the Administrator's decisions and orders and will assist litigants and practitioners in their research and review of decisions and orders that have precedential value in a particular civil penalty action. Publication of the index by order number ensures that the agency is in compliance with statutory indexing requirements.

FOR FURTHER INFORMATION CONTACT: James S. Dillman, Assistant Chief Counsel for Litigation (AGC–400), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3661.

SUPPLEMENTARY INFORMATION: The Administrative Procedure Act requires Federal agencies to maintain and make available for public inspection and copying current indexes that contain identifying information as to those materials required to be made available or published. 5 U.S.C. 552(a)(2). In a notice issued on July 11, 1990, and published in the **Federal Register** (55 FR 29148; July 17, 1990), the FAA announced the public availability of several indexes and summaries that provide identifying information about the final decisions and orders issued by the Administrator pursuant to the FAA's civil penalty assessment authority and the rules of practice governing hearings and appeals of civil penalty actions, 14 CFR part 13, subpart G. The FAA maintains an index of the Administrator's decisions and orders in civil penalty actions organized by order number and containing identifying information about each decision or order. The FAA also maintains a subject-matter index, and digests organized by order number of the Administrator's final decisions and orders in civil penalty cases. In a notice issued on October 26, 1990, the FAA published the indexes and digests herein described for all decisions and orders issued by the Administrator through September 30, 1990. 55 FR 45984; October 31, 1990. The FAA announced in that notice that it would publish supplements to these indexes and digests on a quarterly basis. (Only the subject-matter index will be published cumulatively. Both the order number index and the digests will be non-cumulative.) In a notice issued on January 25, 1991, the FAA published the first supplement to the indexes and digests herein described, which included the decisions and orders issued by the Administrator from October 1 through December 31, 1990. 56 FR 4886; February 6, 1991.

As noted at the beginning of each of these documents, these indexes and digests do not constitute legal authority, and should not be cited or relied upon as such. The indexes and digests are not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context. The Administrator's final decisions and orders, indexes, and digests are available for public inspection and copying at all FAA legal offices. (The addresses of the FAA legal offices are listed at the end of this notice.)

The index arranged by order number lists the service date, the name and docket number of the case, and the regulations that were discussed in each of the Administrator's final decisions and orders. That index, which appears below, lists all final decisions and orders issued by the Administrator from January 1, 1991 through March 31, 1991. The FAA will publish noncumulative supplements to this list on a quarterly basis (e.g., in April, July, October, and January of each year).

Civil Penalty Actions—Decisions Issued By Administrator

Index by Order Number

(Current as of March 31, 1991)

This index does not constitute legal authority and should not be cited or relief upon as much. This index is not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context.

Order No. (service date)	Name and docket No.	Regulations discussed (14 CFR)
91-1 (1/2/91)	Henry Nestor—CP89EA0433	
91-2 1/4/91)	Continental Airlines—CP89NE0031; CP89NE0036; CP89EA0058; CP89EA0047; CP89EA0028; CP89EA0045; CP89NM0029; CP89NM0037; CP89NM0052; CP89NM0057.	
91-3 (2/4/91)	Dawn M. Lewis—CP89SO0108	13.214(b)(1); 13.233(c); 107.21(a); 108.11(d).
91-4 (2/11/91)	[Airport Operator]—CP89 [] 0220	13.224; 107.1(b)(2); 107.13(a)(2); 107.13(b); Part 191.
91-5 (3/29/91)	Jay H. Jones—CP90SO0172	

Civil Penalty Actions—Decisions Issued By the Administrator

Subject Matter Index

(Current as of March 31, 1991)

This index does not constitute legal authority, and should not be cited or relief upon as such. This index is not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context.

The digests of the Administrator's final decisions and orders are arranged by order number, and briefly summarize key points of the decision. The following compilation of digests includes all final decisions and orders issued by the Administrator from January 1, 1991 through March 31, 1991. The FAA will publish noncumulative supplements to this compilation on a quarterly basis (e.g. April, July, October, and January of each year).

Civil Penalty Case Decisions

Digests

(Current as of March 31, 1991)

These digests do not constitute legal authority, and should not be cited or relied upon as such. These digests are not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should

always consult the full text of the Administrator's decisions before citing them in any context.

In the Matter of Henry Nestor

Order No. 91–1 (1/2/91)

Withdrawal of Appeal

Complainant withdrew its notice of appeal of the oral initial decision. Complainant's appeal is dismissed.

In the Matter of Continental Airlines

Order No. 91–2 (1/4/91)

Respondent filed a document entitled "Notice and Motion for Stay," in which Respondent explained that it and its affiliated companies filed voluntary petitions under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware. Respondent sought an indefinite stay of the 51 pending civil penalty cases against it.

Jurisdiction of the Administrator

The Administrator, as the FAA decisionmaker in these cases, does not have jurisdiction over any civil penalty assessment authority case unless and until an appeal of an initial decision is filed, an interlocutory appeal of right is filed, or a motion for interlocutory appeal for cause is granted by a law judge, pursuant to § 13.219 and/or 13.233 of the Rules of Practice. Therefore, the Administrator had jurisdiction over only ten of the cases cited by Respondent, and, as a result, considered Respondent's motion with regard to only those ten cases.

Effect of Bankruptcy on Cases Before the Administrator

Respondent's motion was denied with regard to the ten cases before the Administrator on the basis of a Bankruptcy Code exception that permits federal regulatory agencies to commence and continue proceedings to enforce that agency's policies or regulatory power against entities that file for bankruptcy protection. 11 U.S.C. 362(b)(4). The civil penalty proceedings involved in this case are excepted from the automatic stay because these proceedings are necessary to deter Respondent and others from failing to carry out their security programs. These proceedings enforce public policy and do not adjudicate private rights.

In the Matter of Dawn M. Lewis

Order No. 91–3 (2/4/91)

Respondent submitted here carry-on bag for x-ray screening; the bag contained an unloaded hand gun and four rounds of ammunition. Complainant appealed from the oral initial decision of the law judge in which the law judge found that Respondent violated 49 U.S.C. App. 1471(d) and 14 CFR 107.21(a), but reduced the $2,000 civil penalty sought by Complainant to $500. The law judge based his reduction of the proposed civil penalty on what he considered to be two mitigating factors and Respondent's inability to pay a $2,000 civil penalty.

Complainant argued on appeal that the factors cited by the law judge as a basis for the reduction of the civil penalty were not mitigating factors and that insufficient evidence was presented to support a reduction for inability to pay.

Sanction—Weapons Violations

The Enforcement Sanction Guidance Table contained in FAA Order 2150.3A, Compliance and Enforcement Program, prescribes appropriate sanctions for violations involving concealing of a deadly or dangerous weapon which would be accessible in flight: $1,000 when the weapon is unloaded and ammunition is not accessible; $2,000 when, as in this case, the gun is unloaded and ammunition is accessible; and $2,500 when the gun is loaded. Citing the Broyles decision (FAA Order No. 90–23), the Administrator held that there are no other mitigating or aggravating factors appropriate to consider within these three categories of weapons violations, and that it was improper for the law judge to have reduced the proposed civil penalty on the basis of his findings that Respondent did not observe a warning sign, that Respondent was licensed to carry the gun, and that she had a legitimate business purpose to do so.

Ability to Pay

The Broyles decision was not intended to preclude, and should not be read as precluding, consideration of a respondent's financial circumstances when determining the appropriate sanction. The statement in Broyles that it would be inappropriate to consider any factors as mitigating other than those incorporated in the categories of weapons offenses set forth in the Enforcement Sanction Guidance Table (*i.e.*, loaded, unloaded, ammunition accessible or inaccessible) means that there are no circumstances regarding the particular violation or event that would be considered. This does not include circumstances particular to the individual respondent in such cases (*i.e.*, inability to pay, or prior violation history.) Thus, financial hardship, when proven, can serve as a basis for a reduction in sanction.

In his decision, the law judge said relatively little about Respondent's ability to pay a $2,000 civil penalty. At the hearing, Respondent testified about her various financial problems. Except for one debt, Respondent did not testify as to the specific amounts at issue. Other than her testimony, Respondent did not provide any evidence of her financial hardship.

Once Complainant proves the violations alleged, and what sanction is appropriate for a violation(s) of that nature, the burden necessarily shifts to the respondent to prove inability to pay, if the respondent raises that as a defense, because the respondent has sole control of her financial information. In this case, Respondent's vague and uncorroborated testimony regarding her income and expenses is insufficient to prove by a preponderance of the evidence that she is unable to pay the $2,000 civil penalty. The law judge, therefore, erred in reducing the civil penalty on the basis of financial hardship. Accordingly, the Administrator held that the law judge's reduction of the civil penalty in this case was improper and reinstated the $2,000 civil penalty.

In the Matter of [Airport Operator]

Order No. 91–4 (2–11–91)

Respondent [airport operator] appealed from the law judge's initial decision that Respondent violated 14 CFR 107.13(a)(2). The Administrator denied Respondent's appeal, affirming the law judge's decision, and assessed a $9750 civil penalty.

FAA inspectors observed 13 employees of firms which provide services to the airport not displaying their badges on their outer garments, while these individuals were on the airport's air operations area (AOA), contrary to the requirements of the airport's approved security program (ASP).

Airport Operator Liability

The Administrator affirmed the law judge's determination that Respondent is liable for the failure of individuals to display their badges while on the AOA. Section 107.13 of the FAR, 14 CFR 107.13, requires each airport operator to use the procedures in its ASP. The airport operator must implement the procedures to control access to the AOA in its ASP. Respondent's efforts to implement the badge display procedures were inadequate in light of the number of employees of airport vendors and tenants detected during the FAA inspection. The Administrator rejected

Respondent's argument that the air carriers should be held responsible, rather than the airport operator, when employees of companies providing services to the air carriers fail to display their badges because § 107.13 places the responsibility to use ASP procedures on the airport operators. The airport operator had not delegated its responsibility to the air carriers with regard to their exclusive areas.

Sufficiency of the Evidence

Complainant introduced sufficient evidence indicating that the 13 individuals not displaying their badges were not engaged in any activity which would have justified their failure to display their badges. They were not engaged in any activity in which the display of a badge on their outer garments would have been either impracticable or unsafe. Hence, Complainant satisifed its burden of going forward, and Respondent did not rebut that testimony.

In the Matter of Jay H. Jones

Order No. 91–5 (2–29–91)

Withdrawal of Appeal

Complainant withdrew its notice of appeal of the oral initial decision. Complainant's appeal is dismissed.

The Administrator's final decisions and orders, indexes, and digests are available for public inspection and copying at the following location in FAA headquarters: FAA Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, SW., room 924A, Washington, DC 20591; (202) 267–3641.

In addition, these materials are available at all FAA regional and center legal offices at the following locations:

Office of the Assistant Chief Counsel for the Aeronautical Center (AAC–7), Mike Monroney Aeronautical Center, 6500 South MacArthur, Oklahoma City, OK 73125; (405) 680–3296.

Office of the Assistant Chief Counsel for the Alaskan Region (AAL–7), Alaskan Region Headquarters, 222 West 7th Avenue, Anchorage, AL 99513; (907) 271–5269.

Office of the Assistant Chief Counsel for the Central Region (ACE–7), Central Region Headquarters, 601 East 12 Street, Federal Building, Kansas City, MO 64106; (816) 426–5446.

Office of the Assistant Chief Counsel for the Eastern Region (AEA–7), Eastern Region Headquarters, JFK International Airport, Fitzgerald Federal Building, Jamaica, NY 11430; (718) 917–1035.

Office of the Assistant Chief Counsel for the Great Lakes Region (AGL–7), Great Lakes Region Headquarters, O'Hare Lake Office Center, 2300 East Devon Avenue, Des Plaines, IL 60018; (312) 694–7108.

Office of the Assistant Chief Counsel for the New England Region (ANE–7), New England Region Headquarters, 12 New England Executive Park, Burlington, MA 01803; (617) 273–7310.

Office of the Assistant Chief Counsel for the Northwest Mountain Region (ANM–7), Northwest Mountain Region Headquarters, 18000 Pacific Highway South, Seattle, WA 98188; (206) 227–2007.

Office of the Assistant Chief Counsel for the Southern Region (ASO–7), Southern Region Headquarters, 3400 Norman Berry Drive, East Point, GA 30344; (404) 763–7204.

Office of the Assistant Chief Counsel for the Southwest Region (ASW–7), Southwest Region Headquarters, 4400 Blue Mound Road, Fort Worth, TX 76193; (817) 624–5707.

Office of the Assistant Chief Counsel for the Technical Center (ACT–7), Federal Aviation Administration Technical Center, Atlantic City International Airport, Atlantic City, NJ 08405; (609) 484–6605.

Office of the Assistant Chief Counsel for the Western-Pacific Region (AWP–7), Western-Pacific Region Headquarters, 15000 Aviation Boulevard, Hawthorne, CA 90261; (213) 297–1270.

The FAA still is considering various means by which the Administrator's decisions and orders, and the indexes and digests of those decisions, could be published and offered for sale, such as by subscription through either a public or private reporting service. If the FAA completes such subscription arrangements, the agency will provide further notice of such publication or sale in the **Federal Register**. The FAA may discontinue publication of the subject-matter index and the digests at some future time if a commercial reporting service publishes similar information and provides it to the public in a timely and accurate manner.

Issued in Washington, DC, on April 22, 1991.

Kenneth P. Quinn,

Chief Counsel.

[FR Doc. 91–10252 Filed 5–1–91; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. 91–15; Notice 1]

Receipt of Petition for Determination that Nonconforming 1988 Mercedes-Benz 230E Passenger Cars are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1988 Mercedes-Benz 230E passenger cars are eligible for importation.

SUMMARY: This notice announces receipt of a petition by the National Highway Traffic Safety Administration (NHTSA) for a determination that a 1988 Mercedes-Benz 230E not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because it is substantially similar to a vehicle originally manufactured for importation and sale in the United States and certified by its manufacturer as complying with the safety standards, and is capable of being readily modified to conform to the standards.

DATES: The closing date for comment on the petition is June 3, 1991.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, Nassif Building, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m.]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) (the Act), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined:

"(I) that the motor vehicle * * * is substantially similar to a motor vehicle originally manufactured for importation and sale into the United States, certified under section 114 [of the Act], and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards * * *."

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. After receipt of a petition, NHTSA publishes notice of its receipt in the **Federal Register**, and affords interested persons an opportunity to comment. Following close of the comment period, NHTSA reviews the petition and comments, and publishes its determination in the **Federal Register**.

G&K Automotive Conversion, Inc. of Anaheim, California (Registered Importer No. R–90–007) has petitioned for a determination regarding the eligibility for admission into the United States of 1988 Mercedes-Benz 230E, Model ID 124.023 passenger cars. The vehicle which G&K believes is substantially similar is the 1988

Mercedes-Benz 260E, Model ID 124.026, and it has submitted information indicating that Mercedes-Benz of North America offered the 1988 Mercedes-Benz 260E for sale in the United States. This model was manufactured by Daimler-Benz A.G. and was certified as conforming to all applicable Federal motor vehicle safety standards.

The petitioner notes that the agency, on its own initiative, has already made a determination of substantial similarity covering the 1988 Model 260E that Daimler-Benz A.G. did not certify and offer for sale in the United States (55 FR 47418). It alleges that the 230E and non-conforming 260E cars differ "mainly in engine size and minor options which go with it."

G&K submitted information with its petition intended to demonstrate that the vehicle was originally manufactured to conform to many Federal motor vehicle safety standards in the same manner as its companion U.S. model, or is capable of being readily modified to conform to them.

Specifically, it avers that the noncertified 230E is identical to the certified 260E with respect to compliance with Standards Nos. 102 Transmission Shift Lever Sequence . . . ., 103 Defrosting and Defogging Systems, 104 Windshield Wiping and Washing Systems, 105 Hydraulic Brake Systems, 106 Brake Hoses, 107 Reflecting Surfaces, 109 New Pneumatic Tires, 113 Hood Latch Systems, 116 Brake Fluids, 124 Accelerator Control Systems, 201 Occupant Protection in Interior Impact, 202 Head Restraints, 203 Impact Protection for the Driver From the Steering Control System, 204 Steering Control Rearward Displacement, 205 Glazing Materials, 207 Seating Systems, 210 Seat Belt Assembly Anchorages, 211 Wheel Nuts, Wheel Discs and Hubcaps, 212 Windshield Retention, 216 Roof Crush Resistance, 219 Windshield Zone Intrusion, and 302 Flammability of Interior Materials. The vehicle would also appear to comply with Standard No. 111 Rearview Mirrors. Petitioner states that the vehicle is equipped with an interior mirror and exterior driver and passenger mirrors, but "the passenger's outside rear view mirror is convex and must be replaced." Standard No. 111 does not require a passenger side mirror unless the inside rearview mirror does not meet field of view requirements. If a passenger side mirror is provided under these circumstances, it may be either unit magnification or convex.

Petitioner also argues that the vehicle is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 Controls and Displays: (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp; (c) recalibration of the speedometer/odometer from kilometers to miles.

Standard No. 108 Lamps, Reflective Devices and Associated Equipment: (a) install U.S.-model headlamp assembles and front sidemarkers; (b) install U.S.-model taillamp assemblies which incorporate rear sidemarkers; (c) install a high mounted stop lamp.

Standard No. 110 Tire Selection and Rims: Install a tire information placard.

Standard No. 114 Theft Protection: The vehicle's key-locking system lacks a warning buzzer, and it is necessary to install a buzzer microswitch in the steering lock assembly, and a buzzer itself.

Standard No. 115 Vehicle Identification Number: Install a VIN label.

Standard No. 118 Power Window Systems: Rewire so that the window transport is inoperative when the ignition is switched off.

Standard No. 206 Door Locks and Door Retention Components: Replace rear door locks and locking buttons with U.S. parts.

Standard No. 208 Occupant Crash Protection: (a) Install a U.S. model seat belt in the driver's position, or install a belt webbing-actuated microswitch inside the driver's seat belt retractor; (b) install an ignition switch-actuated seat belt warning lamp and buzzer.

Standard No. 214 Side Door Strength: Install reinforcing beams.

Standard No. 301 Fuel System Integrity: To achieve fuel tank venting, install a rollover valve in the fuel tank vent line between the fuel and the evaporative emissions collection cannister.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: June 3, 1991.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(II) and (C)(iii); 49 CFR 593.8; delegation of authority at 49 CFR 1.50.

Issued on: April 26, 1991.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 91-10335 Filed 5-1-91; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: April 25, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0169.

Form Number: 4461, 4461-A, 4461-B.

Type of Review: Extension.

Title: (1) Application for Approval of Master or Prototype and Regional Prototype Defined Contribution Plan, Form 4461; (2) Application for Approval of Master or Prototype and Regional Prototype Defined Benefit Plan, Form 4461-A; (3) Application for Approval of Master or Prototype Plan or Regional Prototype Plan, Form 4461-B.

Description: IRS uses these forms to determine from the information submitted whether the applicant plan qualifies under section 401(a) of the Internal Revenue Code for plan approval. The application also is used to determine if the related trust qualifies for tax exempt status under Code section 501(a).

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 1,200.

Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping—40 hours, 40 minutes.
Learning about the law—5 hours, 2 minutes.
Preparing the form—6 hours, 51 minutes.
Copying, assembling, and sending the form to IRS—16 minutes.
Frequency of Response: The forms are normally filed only once.
Estimated Total Reporting Burden: 120,374 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91–10327 Filed 5–1–91; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

Date: April 26, 1991.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: None.
Type of Review: New Collection.
Title: Philadelphia District Survey of Taxpayers Contacted by the IRS Collection Function.
Description: The data collected will be used to determine the level of satisfaction of taxpayers contacted by Collection Function personnel of IRS to identify potential areas of program improvement, and thereby improve the effectiveness of collection activities.
Respondents: Individuals or households.
Estimated Number of Respondents: 800.
Estimated Burden Hours Per Response: 15 minutes.
Frequency of Response: One-time survey.
Estimated Total Reporting Burden: 200 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 91–10328 Filed 5–1–91; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

Date: April 24, 1991.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0042.
Form Number: CF 4457.
Type of Review: Extension.
Title: Certificate of Registration for Personal Effects Taken Abroad.
Description: The document is used to provide travelers with a means of showing proof of a foreign-made personal item.
Respondents: Individuals or households.
Estimated Number of Respondents: 500,000.
Estimated Burden Hours Per Response: 3 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 25,000 hours.
OMB Number: 1515–0097.
Form Number: None.
Type of Review: Extension.
Title: Customs Regulations Relating to Copyrights.
Description: Copyright owners who choose to record a copyright with Customs for import protection must establish validity of the copyright, pay an administration fee, and provide samples and other information to aid Customs officers in identifying pirated copies.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 600.
Estimated Burden Hours Per Response: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 600 hours.
Clearance Officer: Ralph Meyer (202) 343–0044, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington DC, 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91–10329 Filed 5–1–91; 8:45 am]

BILLING CODE 4820–02–M

Public Information Collection Requirements Submitted to OMB for Review

April 24, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer. Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of the Public Debt

OMB Number: 1535–0060.
Form Number: PD F 2488–1.
Type of Review: Extension.
Title: Certificates by Legal Representative(s) of Decedent's Estate, During Administration, of Authority to Act and of Distribution Where Estate Holds No More Than $1,000 (face amount) United States Savings and Retirement Securities, Excluding Checks Representing Interest.
Description: This form is used by legal representative of a decedent's estate to establish his/her authority to act and to request disposition of the securities.
Respondents: Individuals or households.

Estimated Number of Respondents: 1,575.

Estimated Burden Hours Per Response: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,575 hours.

OMB Number: 1535–0085.

Form Number: PD F 5261.

Type of Review: Extension.

Title: Notice of Maturing Treasury

Description: This form is used by owner, to have redemption proceeds of a security in the same form registration.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents: 150,000.

Estimated Burden Hours Per Response: 6 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 15 000 hours.

Clearance Officer: Rita DeNagy (202) 447–1640, Bureau of the Public Debt, room 137, BEP Annex, 300 13th Street, SW., Washington, DC 20239–0001.

OMB Reviewers: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91–10330 Filed 5–1–91; 8:45 am]

BILLING CODE 4810–40–M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 85
Thursday, May 2, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

* * * * *

"FEDERAL REGISTER" NUMBER: 91–9275.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, April 25, 1991, 10:00 a.m.

THE FOLLOWING ITEM WAS ADDED TO THE AGENDA: 1988 Presidential audits—Status Report

* * * * *

DATE AND TIME: Tuesday, May 7, 1991, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, May 9, 1991, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Advisory Opinion 1991–9:
  Judith L. Corley on behalf of Congressman Peter Hoagland
Presidential Primary and General Election Regulations:
  Final Rules and Explanation and Justification
Revised FY 1991 Management Plan
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 376–3155.

Delores Harris,
Administrative Assistant, Office of the Secretariat.

[FR Doc. 10545 Filed 4–30–91; 2:38 pm]
BILLING CODE 6715–01–M

MERIT SYSTEMS PROTECTION BOARD

TIME AND DATE: 10:00 a.m., Monday, May 13, 1991.

PLACE: Eighth Floor, 1120 Vermont Avenue, NW., Washington, DC 20419.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Case processing issues.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Robert E. Taylor, Clerk of the Board, (202) 653–7200.

Dated: April 29, 1991.

Robert E. Taylor,
Clerk of the Board.

[FR Doc. 91–10498 Filed 4–30–91; 1:46 pm]
BILLING CODE 7400–01–M

UNITED STATES INSTITUTE OF PEACE

DATE: May 8–9, 1991.

TIME: 9:00 a.m. to 5:30 p.m.

LOCATION: Vista Hotel, 1400 M Street, NW. (Monticello-West Room) Washington, DC.

STATUS: (Open session)—Portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law (98–525).

AGENDA: (Tentative)—Consideration of the minutes of the Forty-Sixth meeting of the Board of Directors; Chairman's Report; President's Report; Annual Program Review; Board Committee Reports.

CONTACT: Mr. Gregory McCarthy, Director, Public Affairs and Information, telephone: 202/457–1700.

Dated: April 22, 1991.

Bernice J. Carney,
Director, Office of Administration United States Institute of Peace.

[FR Doc. 91–10523 Filed 4–30–91; 1:46 pm]
BILLING CODE 3155–01–M

federal register

Thursday
May 2, 1991

Part II

Department of Housing and Urban Development

24 CFR Parts 50, 219, 221, 241, and 248
Mortgage and Loan Insurance Programs: Low Income Housing Mortgages; Prepayment; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 50, 219, 221, 241, and 248

[Docket No. R-91-1513; FR-2978-P-01]

RIN 2501-AB14

Prepayment of a HUD-Insured Mortgage by an Owner of Low Income Housing

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule sets forth HUD's procedures and standards for implementing subtitle A of title VI of the Cranston-Gonzalez National Affordable Housing Act of 1990, entitled the "Low Income Housing Preservation and Resident Homeownership Act," which repeals and replaces the Emergency Low Income Housing Preservation Act of 1987. This rule is intended to create a permanent and comprehensive program which preserves privately-owned, low income housing projects while not unduly restricting the owners' mortgage prepayment rights. In localities where there is an adequate supply of low income housing, prepayment of the mortgage would not otherwise undermine public policy objectives set forth in the statute, and prepayment would not result in a material increase in the economic hardship of the current tenants, owners of projects subject to low income affordability restrictions may terminate these restrictions and prepay their HUD-insured mortgages or terminate their mortgage insurance contracts. In areas where the supply of low income housing is inadequate, the low income affordability restrictions must be maintained on the projects for their remaining useful life, but owners may receive a fair market return on their investment through the receipt of incentives provided by HUD or through the transfer of the property to other entities which agree to continue the low income affordability restrictions. This rule provides an opportunity for homeownership of eligible low income housing projects by the tenants through resident homeownership programs. It also encourages the transfer of low income housing projects to nonprofit organizations and State and local government entities, by giving these entities the first opportunity to purchase available projects.

DATES: *Comment due date:* All written comments must be received on or before July 1, 1991. The Department urges commenters to submit comments as soon as possible after the publication of this proposed rule in order to receive full consideration.

ADDRESSES: Submit written comments to the Office of the General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m.–5:30 p.m. Eastern Standard Time) at the above address. As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 708–4337. (This is not a toll-free number.) Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk at voice (202) 708–2084; TDD (202) 708–4594. (These are not toll-free numbers).

FOR FURTHER INFORMATION CONTACT: Kevin J. East, Office of Multifamily Housing Preservation and Property Disposition, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410. Telephone, voice (202) 708–2300; TDD (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

The information collection requirements contained in the rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3502). No person may be subject to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register.**

Background

During the late 1960's and early 1970's several thousand multifamily projects were built with mortgages insured or assisted by HUD under sections 221(d)(3) and 236 of the National Housing Act. HUD's regulations at 24 CFR 221.524 and 236.30 provide that in the case of a project owned by a limited distribution mortgagor that is not receiving payments under a rent supplement contract executed pursuant to 24 CFR part 215, the owner is permitted to prepay the mortgage debt at the expiration of 20 years after final endorsement of the mortgage for insurance. (The mortgage term of such mortgages is 40 years.) Prepayment of the mortgage has the effect of terminating the HUD-imposed low income affordability restrictions which ensure that the project is maintained for very low, low and moderate income tenants. Over the next 15 years, the owners of 360,000 units of multifamily projects insured or assisted under parts 236 and 221 of this title will become eligible to prepay their mortgage loans and convert their properties to market rate rental housing or other purposes. Considerable concern has been raised about the risk of losing viable low income projects due to owners exercising their option to prepay and convert their projects to more profitable use.

In response to these concerns, Congress initially enacted an emergency measure, title II of the Housing and Community Development Act of 1987, the Emergency Low Income Housing Preservation Act of 1987 (the "1987 Act"). The final rule implementing the 1987 Act, part 248 of title 24 of the CFR, was published on September 21, 1990 at 55 FR 38943 (the "existing rule"). The 1987 Act placed constraints on an owner's right of prepayment and created incentives to either encourage owners to retain the low income affordability restrictions in exchange for receiving a greater return on their investment or to transfer the property to purchasers who would agree to retain the low income affordability restrictions. The fundamental principles of the 1987 Act were that the housing should be preserved for its intended beneficiaries and that owners should be guaranteed a fair and reasonable return on their investment through new incentives.

The 1987 Act was intended to be temporary in nature and was designed to give Congress time to fashion a permanent program for the preservation of existing low income housing projects. Congress' permanent solution to this problem is embodied in title VI of the Cranston-Gonzalez National Affordable Housing Act, Public Law 101–625, enacted November 28, 1990. Subtitle A of title VI, the Low Income Housing Preservation and Resident Homeownership Act of 1990 (the "1990 Act"), repeals and replaces the 1987 Act.

The 1990 Act provides permanent authority to deal with HUD-assisted projects where owners have the option

of prepaying their mortgage loans. Its basic objectives are to assure that most of the "prepayment" inventory of assisted housing remains affordable to low income households and to provide opportunities for tenants to become homeowners, while at the same time fairly compensating owners for the value of their properties. This proposed rule implements subtitle A of title VI of the 1990 Act.

The prepayment process begins under the 1990 Act when the owner of eligible low income housing files a notice of intent. If the project is located in an area where there is an adequate supply of low income housing, the owner may seek to prepay the mortgage and terminate low income affordability restrictions pursuant to the standards set forth in section 218 of the statute and § 248.141 of the proposed rule. In all other cases, HUD and the owner would each hire an appraiser to estimate the value of the project as market rate rental housing (the "extension preservation value") and the value of the project at its highest and best use (the "transfer preservation value"). If HUD and the owner cannot agree on the appraised values based on the first two appraisals, a third appraiser would be hired jointly by HUD and the owner.

If the owner wants to retain the project, it would be entitled to receive incentives that would generate sufficient project income to enable the owner to receive an annual authorized return of 8 percent of its equity in the project, measured on the basis of the extension preservation value less outstanding debt. The total project income would not exceed the Federal cost limit, i.e., the greater of 120 percent of the section 8 fair market rent or 120% of the prevailing rents in the relevant local market area. The annual authorized return could be received in the form of allowable distributions, an equity loan, or both. As a condition to receiving such incentives, the owner would be obligated to maintain the project as low income housing for the project's remaining useful life.

If the owner seeks to sell the project, and the transfer preservation rent (i.e., the aggregate rent stream projected to be necessary to support the costs of sale, rehabilitation, debt service of the federally-assisted mortgage, operating expenses and adequate reserves) does not exceed the "Federal cost limit," the owner would offer the project for sale under § 248.157 for a price (including assumption of the federally-assisted mortgage) that may not exceed the transfer preservation value. The first 12 months of the sale period would be restricted to "priority purchasers," i.e., resident councils organized to purchase the project under a homeownership program, or any nonprofit organization or State or local agency that agrees to maintain low income affordability restrictions for the remaining useful life of the project. If, at the end of the 12-month period, the owner does not accept any bona fide offer from a priority purchaser, the owner must offer the project for sale to any qualified purchaser, including priority purchasers, for 3 months. If an offer to purchase is accepted, HUD would provide incentives, grant assistance, or both, sufficient to enable the purchaser to acquire the project, pay debt service on the federally-assisted mortgage and on any rehabilitation loan, meet operating expenses and establish adequate reserves, receive a return of 8 percent on any cash investment made by the purchaser and, in the case of a priority purchaser, receive reimbursement for transaction expenses. As in the case of an owner that retains the project and receives incentives, the purchaser would be obligated to maintain the project as low income housing for the project's remaining useful life. If the transfer preservation rent exceeds the Federal cost limit, the owner would offer the project for sale under § 248.161. The sale procedure under § 248.161 is similar to that under § 248.157, except that the owner is required to accept any bona fide offer to purchase the project for the transfer preservation value, whereas an owner under § 248.157 may elect not to accept a bona fide offer. Any amount necessary to fund the transfer, over and above incentives that can be supported by project rental income at the Federal cost limit, would be funded by a capital grant under § 248.161(d). Under either § 248.157 or § 248.161, if the owner does not receive a bona fide offer, the owner may prepay the mortgage and terminate the low income affordability restrictions, subject only to certain protections for current tenants.

Under § 248.173, if a project is being offered for sale under either § 248.157 or § 248.161, a "resident council" may seek to purchase the project under a resident homeownership program. HUD would provide grant assistance sufficient to pay the purchase price, transaction expenses, organizational costs, relocation expenses, training costs and establishment of adequate reserves for replacements and, if necessary, operating reserve escrows.

Part 241

The proposed rule also includes numerous revisions to part 241, "Supplementary Financing for Insured Project Mortgages." Section 602(a) of the 1990 Act substantially revised the provisions of section 241 of the National Housing Act, 12 U.S.C. 1715z–6(f). As explained below, the proposed rule revises part 241, subparts E and F to include provisions that are applicable to owners proceeding under either the 1987 Act or the 1990 Act.

Amendments to Section 250 of the National Housing Act

Sections 602 (b) and (c) of the 1990 Act amend section 250 of the National Housing Act, 12 U.S.C. 1715z–15, by deleting the former sections 250 (b) and (c), which required HUD to provide a priority for assistance under the section 8 and Flexible Subsidy programs to owners of subsidized projects in order to induce such owners not to prepay their mortgages. Sections 250 (b) and (c) were precursors of the 1987 Act and the 1990 Act, and were essentially rendered obsolete by the later-enacted statutes.

In addition, section 602(b) adds language to section 250 providing that a mortgagee may foreclose a mortgage on, or acquire by deed in lieu of foreclosure, any eligible low income housing project, as defined in section 229 of the 1990 Act, only if the mortgagee also conveys title to the Secretary in connection with a claim for insurance benefits. This amendment appears to be an attempt to impose the same restriction governing foreclosure that is contained in section 211(b) of the 1990 Act to projects whose mortgages have not yet reached the 18th year following final endorsement and thus are not yet subject to section 211(b). (Such projects are instead subject to section 250(a)). The Department has not promulgated regulations implementing section 250, and thus this proposed rule does not include any provisions implementing the amendments to section 250 in sections 602 (b) and (c).

Other Preservation Provisions of the 1990 Act

Subtitle B of title VI contains other preservation provisions concerning: (a) Advances by owners to finance capital improvements in subsidized projects; (b) increases in rent levels for subsidized projects; and (c) assistance to prevent prepayment under State mortgage programs. These provisions will be implemented through a separate rule.

Amendments Implementing HUD Reform Act Provisions

The proposed rule also includes amendments that implement certain provisions of the Department of Housing and Urban Development Reform Act of

1989, Public Law 101–235 (the "HUD Reform Act"), that were not implemented in the existing rule. The statutory provisions and the corresponding provisions of the proposed rule are as follows:

1. Section 219.325 has been amended to implement section 203(a)(2) of the HUD Reform Act, which authorizes HUD to adjust the terms of a capital improvement loan (for example, by deferring repayment of the debt as long as the low and moderate income character of the project is maintained) in connection with a plan of action.

2. Sections 248.221 and 248.234 have been amended to implement section 203(d) of the HUD Reform Act, which provides that any plan of action shall specify actions that the Secretary and the owner shall take to ensure that any tenants displaced as a result of (a) a plan of action that involves termination of low income affordability restrictions, or (b) modifications of a plan of action due to the Secretary's inability to extend section 8 assistance for the full term of the plan of action, are relocated to affordable housing.

3. Section 241.166 has been added to implement section 204(b) of the HUD Reform Act, which provides that (a) when underwriting a rehabilitation loan under part 241, subpart A, on a subsidized project, HUD may assume that any rental assistance provided for servicing the additional debt will be extended for the term of the loan; and (b) the holder of an insured mortgage that is senior to the rehabilitation loan may not withhold its consent to such a loan.

Public Comment Period

Section 604(d) of the 1990 Act provides that the Secretary shall, "subject to the provisions of section 553 of title 5" of the United States Code, publish proposed rules to implement the 1990 Act within 90 days of the date of enactment, and also provides that not later than 45 days after the expiration of the 90-day period, the Secretary shall issue an interim or final rule to implement the 1990 Act. The Department construes the reference to 5 U.S.C. 553 as a direction that HUD allow a suitable period for the receipt and consideration of public comments on the proposed rule. Accordingly, the Department has provided for a 60-day period after the publication of this proposed rule for the submission of public comments. On the basis of the public comments, an interim or final rule will be published within 45 days after the expiration of the 60-day comment period, and will replace the existing rule.

Description of the Proposed Rule

The proposed rule, as printed herein, contains three distinct subparts. It incorporates subpart B of the existing rule, which establishes procedures and standards for prepayments and plans of action under the 1987 Act, as subpart C, and implements the 1990 Act in a new subpart B. Each of these subparts is independent of the other. Subpart A of this rule contains general provisions relating to both subparts B and C and explains which subpart owners of eligible low income housing may proceed under in electing to prepay their mortgages, receive incentives or transfer the project.

Section 248.1 (Purpose)

The purpose of this proposed rule is based primarily on section 202(b) of the 1987 Act and § 248.101 of the existing rule. The basic purpose is to strike a balance between the continuing need for low income housing units and private owners' contractual right to prepay their HUD-insured or HUD-assisted mortgages. The proposed rule adds the purpose of facilitating the sale of projects to tenants under tenant homeownership programs, and also clarifies that the rule is intended to preserve housing for very low, low and moderate income tenants.

Section 248.3 (Applicability)

The provisions of the proposed rule are applicable to any project deemed eligible low income housing on or after November 1, 1987, with the exception of any project covered by a homeownership program approved by HUD under title IV, Subtitle B of the Cranston-Gonzalez National Affordable Housing Act, "HOPE for Homeownership of Multifamily Units." This exception is based on section 427 of the Act. (As explained below, the definition of "eligible low income housing" is slightly different for purposes of subpart B than the definition for purposes of subpart C.) A notice of program guidelines for HOPE for Homeownership for Multifamily Units Program (the "HOPE Program Guidelines") implementing title IV was published in the **Federal Register** on February 4, 1991 at 56 FR 4436.

Section 248.5 (Election to Proceed Under Subpart B or C)

After January 1, 1991, owners of eligible low income housing who submit notices of intent to prepay their HUD-insured or assisted mortgage, terminate the mortgage insurance contract, extend the low income affordability restrictions on the project, or transfer the project to a qualified purchaser shall proceed under the provisions of subpart B of the proposed rule.

However, pursuant to section 604 of the 1990 Act, the proposed rule establishes a transition period during which certain owners may choose to comply with the provisions of either subpart B or subpart C. Section 604(a) of the 1990 Act provides that an owner of eligible low income housing that files a notice of intent under either the 1987 Act or the 1990 Act prior to January 1, 1991, may elect to file a plan of action under either statute. On December 11, 1990, the Department issued notice 90–88, "Transition Rule for Filing Notices of Intent Pursuant to section 604(a) of the Cranston-Gonzalez National Affordable Housing Act of 1990," which informed owners of their right to file a notice of intent prior to January 1, 1991 under either statute and thus preserve their option under section 604(a).

Section 604(b) of the 1990 Act provides that any owner who has filed a plan of action on or before October 11, 1990, shall have the right to convert to the system of incentives and restrictions under the 1990 Act, with such adjustments as the Secretary deems appropriate to compensate for the value of any incentives received under the 1987 Act. It provides further that owners filing plans of action after October 11, 1990, shall not have any such right to convert to a system of incentives under the 1990 Act. To the extent that a conflict may exist between sections 604(a) and 604(b), the Department construes the latter provision as taking precedence. Thus, if an owner has filed a notice of intent prior to January 1, 1991, but then files a plan of action under the 1987 Act after October 11, 1990, it is the Department's view that the owner is barred from subsequently converting to a system of incentives under the 1990 Act.

Accordingly, the proposed regulation provides that owners of projects which have become eligible low income housing prior to January 1, 1991, who have, prior to that date, filed a notice of intent to prepay under the existing rule, but who have not submitted a plan of action after October 11, 1990, may choose to proceed under the provisions of either subpart B or subpart C. Section 248.5 of the proposed rule describes the procedure that an owner of eligible low income housing must follow in order to exercise its option to proceed under either subpart B or subpart C.

It should be noted that if an owner files a plan of action prior to October 11, 1990 under the existing rule, and then prior to its approval, but after the

effective date of this rule, withdraws the plan of action, a subsequent notice of intent and plan of action may be filed under subpart B of this rule and the owner need not comply with the conversion provisions of § 248.5(c).

Section 248.5 states in part that an owner who has filed a plan of action on or before October 11, 1990, and who wishes to convert to the system of incentives and restrictions under subpart B of the proposed rule, must declare its election to do so by filing a notice of intent under subpart B by the latter of February 5, 1992 or 30 days after the date of HUD's final approval of the plan of action. Section 248.5 supersedes § 248.235 of the existing rule, which is deleted in the proposed rule. The February 5, 1992 date is derived from section 230 of the 1987 Act and § 248.235 of the existing regulations; the 30-day period is provided so that an owner whose plan of action is approved shortly before February 5, 1992 would have a sufficient period of tme to elect to convert to a plan of action under subpart B. While section 604(b) does not explicitly provide a date by which owners must elect to convert to the system of incentives and restrictions under the 1990 Act, the Department construes section 604(b) as permitting HUD to establish a reasonable deadline for such elections. An owner that wishes to convert to the system of incentives and restrictions under the 1990 Act must comply with all of the procedural and substantive requirements of the 1990 Act, and must also provide such documentation as is necessary for the Department to evaluate the incentives received by the owner under the 1987 Act.

Section 248.7 (Preemption of State and Local Laws)

Section 248.7 repeats verbatim the language of section 232 of the 1990 Act. Section 232 prohibits any State or locality from establishing, continuing in effect or enforcing any law or regulation that (a) restricts or impairs the right of an owner of eligible low income housing to prepay its mortgage, voluntarily terminate mortgage insurance or receive incentives under the 1990 Act, (b) is limited in its application to eligible low income housing for which the owner has prepaid the mortgage or voluntarily terminated the insurance, or (c) is otherwise inconsistent with the 1990 Act. Section 232, and § 248.7 of the proposed rule, specifically exclude from such preemption any State or local law or regulation, to the extent such law or regulation is applicable both to housing receiving Federal assistance and to nonassisted housing, and also excludes from preemption any contractual restrictions or obligations entered into before the enactment of the 1990 Act that prevent or limit prepayment. Thus, for example, the preemption provision has no effect on any mortgage note provisions requiring the consent of the State housing finance agency for prepayment of the mortgage.

Section 248.9 (Waivers)

Section 248.9 authorizes the Secretary to waive any provision of part 248, subject to statutory limitations, on the basis of a written determination of good cause. The existing rule does not contain a waiver provision.

Subpart B—Prepayments and Plans of Action Under the 1990 Act

Section 248.101 (Definitions)

Aggregate Preservation Rents—Aggregate preservation rents are the gross potential income required by the project to meet certain expenses and preservation costs, depending on whether the owner intends to retain the project with the low income affordability restrictions—the "extension preservation rent"—or transfer the project to a qualified purchaser—the "transfer preservation rent." In both instances, the project's gross potential income must be sufficient to support debt service on any rehabilitation loan and federally-assisted mortgage, project operating expenses and adequate reserves. In this context the term "rehabilitation loan" would include not only a rehabilitation loan insured by the Secretary under part 241 that would be obtained in connection with the plan of action, but also any other rehabilitation loan for the project that is outstanding at the time of the notice of intent. In calculating "adequate reserves" the Department will determine what additional funds must be added to existing reserves in order to maintain the project in accordance with the housing standards specified in § 248.147.

Project operating expenses would be determined by HUD, based on operating expenses for the past three years, adjusted for trend, reasonable reductions in maintenance and utility costs attributable to rehabilitation and energy improvements financed under the plan of action or a trended expense estimate based on the reasonable reductions in maintenance and utility costs attributable to rehabilitation and energy improvements. More weight will be given to the actual expenses, assuming they are reasonable.

If the owner intends to retain the property, the extension preservation rent must also include sufficient income to cover the annual authorized return. Where the owner plans to transfer property, the transfer preservation rent must be sufficient to cover debt service on any acquisition loan.

It should be noted that aggregate preservation rents are to be determined for the project as a whole, and not for each unit in the project, and that the sole purpose of the aggregate preservation rents is to provide a basis for comparison with the Federal cost limit. If the owner intends to transfer the project, the transfer preservation rent would be used to determine whether the project exceeds the Federal cost limit; if the owner intends to retain the project, the extension preservation rent would be used for this purpose.

Annual Authorized Return—The proposed rule defines annual authorized return as the sum of (a) allowable distributions each year plus (b) the debt service attributable to the equity take-out portion of any loan approved under the plan of action, expressed as a percentage of the project's extension preservation equity. This definition recognizes that a plan of action involving incentives could allow the owner to realize its equity in a project through either an increase in allowable distributions, an equity take-out loan, or both.

Bona fide offer—The proposed definition of bona fide offer, along with other requirements concerning sale transactions under the proposed rule, have been designed to ensure that neither owners nor priority purchasers take advantage of the sales process to undermine the purposes of the rule. Section 224(a) of the 1990 Act provides that if the purchaser under a plan of action is unable to consummate a sale for reasons other than HUD's inability to provide incentives, the owner may, subject to the provisions of sections 220 and 221, prepay the mortgage and terminate low income affordability restrictions. This provision is implemented at § 248.169 of the proposed rule. HUD will seek to ensure that owners do not contrive sham offers that are designed to discourage other offers and then fall through, thus leaving the owner free to prepay its mortgage. In part, HUD will do so through enforcement of the requirement that an entity which is a "related party" to the owner does not qualify as a priority purchaser or a qualified purchaser. See definition of "related party." In addition, HUD will seek to ensure that organizations do not make offers in bad faith for the purpose of forestalling an owner from exercising its right to prepay

the mortgage under the rule. The one percent earnest money deposit requirement is designed in part to prevent such offers. Moreover, the three-month time limits for submitting a plan of action and for closing on a sale, see §§ 248.135(a), 248.157(*1*), will prevent undue delay in this regard. The Department intends to seek administrative sanctions against the seller and/or purchaser if it uncovers evidence of any such sham transaction.

The rule provides that HUD will make a determination as to whether an offer to purchase the project qualifies as a bona fide offer. As set forth in § 248.157, the purchaser must include with the offer a substantial earnest money deposit and a contract of sale in form acceptable to HUD.

Community-based nonprofit organization—The definition of community-based nonprofit organization is derived from the definition of "community housing development organization" used in the HOME program established in title II of the Cranston-Gonzalez National Affordable Housing Act. In light of language in the House Conference Report to the Cranston-Gonzalez National Affordable Housing Act, Conf. Rep. No. 101–943, 101st Cong., 2nd Sess. (the "Conference Report") indicating that Congress intended the definition of nonprofit organization to "conform" to the definition of community housing development corporation under the HOME program, the Department has included this definition in the proposed rule and provided that entities meeting this definition would have a priority in purchasing a project over State and local government agencies and other nonprofit organizations (other than resident councils offering to purchase the project under a homeownership program).

Default—The proposed definition provides that a mortgage would not be considered to be in default unless the 30-day "grace period" provided by the mortgage for the cure of a default has expired. A mortgage for a project that is subject to a workout agreement would not be considered in default under this definition. The proposed definition recognizes the fact that the owner's failure to make a mortgage payment on the first day of the month does not mean that the project is in financial jeopardy or that an insurance claim is imminent. The proposed definition differs from that applicable to multifamily mortgage insurance claims, which provides that a mortgage is considered in default upon the mortgagor's failure to make any payment due or upon the mortgagee's acceleration of the debt due to the mortgagor's failure to perform any other covenant under the mortgage. See 24 CFR 207.255.

Eligible Low Income Housing—The definition of "eligible low income housing" in section 229(1) of the 1990 Act tracks the language of the corresponding definition in section 233(1) of the 1987 Act, except that under the 1990 Act, the project must be within two years of becoming eligible for prepayment without the prior written approval of the Secretary, whereas the 1987 Act's definition provides that the project must be within one year of becoming eligible for prepayment.

If, at any time on or after November 1, 1987, a project meets the criteria of both subsections (a) and (b) of the definition at the same time, then the project is thereafter an eligible low income housing project, regardless of future events. Thus, if a section 221(d)(3) market rate project was receiving section 8 Loan Management Set-Aside assistance on November 1, 1987, and at that time the mortgage was in its 20th year from final endorsement, the project would be considered to be eligible low income housing at all times thereafter, even if the owner subsequently decided not to renew the section 8 contract. If, on the other hand, the section 8 contract for a section 221(d)(3) market rate project expires during the 15th year from final endorsement, the project would not meet the criteria in both subsection (a) and subsection (b) at the same time, and thus the project would not constitute eligible low income housing. (This analysis applies to the definitions of eligible low income housing in both subparts B and C.)

The definition of "eligible low income housing" in the proposed rule adds an exception for projects which are subject to a use restriction imposed by the Secretary that restricts the project to low and moderate income use for a period at least equal to the remaining term of the mortgage. The primary impact of this exception is to exclude from the universe of eligible low income housing projects those projects which have received assistance under the Flexible Subsidy program authorized by section 201 of the Housing and Community Development Amendments of 1978, as amended, 12 U.S.C. 1715z–1a, and are subject to a use agreement imposed pursuant to that statute. Section 201(d)(1) of the 1978 Amendments was amended by section 211(c) of the Housing and Community Development amendments of 1979 to require that an owner receiving Flexible Subsidy assistance must agree, as a condition to receiving such assistance, to "maintain the low- and moderate-income character of (the) project for a period at least equal to the remaining term of the project mortgage." HUD has implemented this requirement by conditioning the provision of Flexible Subsidy assistance on the execution and recordation of a use agreement that requires the owner to maintain the project under the provisions of the applicable insurance program until the maturity date of the mortgage.

The existing rule does not explicitly address the issue of whether a project that is subject to a Flexible Subsidy use agreement may constitute "eligible low income housing" or whether its owner may receive incentives. However, the Department has taken the position that since the owner of such a project would be unable to demonstrate that the project has a "higher and better use," as required by § 248.233(b), the Department would not entertain a request for incentives with respect to such a project. Likewise, the Conference Report states at page 461 that the valuation process, which is at the heart of the procedures for determining incentives under the 1990 Act, "is designed primarily to determine what economic result an owner might have achieved by prepaying the existing HUD-assisted mortgage, ending the affordability restrictions on the housing and converting the housing to alternative use (i.e., market rate rental housing, condominiums or nonresidential uses)." Accordingly, the Department believes that it is consistent with the Congressional intent of the 1990 Act to exclude from the definition of eligible low income housing those projects which are subject to a Flexible Subsidy use agreement.

Under the language of the proposed rule the Department would likewise exclude projects which are subject to a use restriction imposed pursuant to section 203(h)(2) of the Housing and Community Development Amendments of 1978, as amended by section 181(g) of the Housing and Community Development Act of 1987. Section 203(h)(2) provides that the Secretary may not approve the sale of any subsidized project (a) that is subject to a HUD-held mortgage, or (b) if the sale transaction involves the provision of any additional subsidy funds by the Secretary or a recasting of the mortgage, unless such sale is made as part of a transaction that will ensure that the project will continue to operate at least until the maturity date of the mortgage in a manner that will provide rental housing "on terms at least as

advantageous to existing and future tenants as the terms required by the program under which the loan or mortgage was made or insured prior to the proposed sale of the project." An owner may comply with this requirement either by having the mortgage note amended to prohibit prepayment without HUD's consent for the remaining term of the mortgage or by executing and recording a use agreement obligating the owner to operate the project until the maturity date of the mortgage in accordance with the low income affordability restrictions applicable to the program under which the mortgage was insured. Under the definition of eligible low income housing in the proposed rule, owners who choose either option would be precluded from subsequently filing a notice of intent.

Since projects encumbered with use restrictions imposed under the Flexible Subsidy statute or section 203(h)(2) would not be deemed eligible low income housing under the definition in the proposed rule, the owners of such projects would not be precluded by the proposed rule from prepaying their mortgages. However, even if the mortgage on such a project were prepaid, the owner would still be required to comply with the use restriction for the duration thereof.

Projects which receive rent supplement assistance under section 101 of the Housing and Urban Development Act of 1965 and 24 CFR part 215 are prohibited from prepaying the mortgage debt in full without HUD's consent at any time during the 40-year term of the mortgage. See 24 CFR § § 221.524(a); 236.30(a). Therefore, it is the Department's position that such projects do not constitute eligible low income housing. (Although the definitions of eligible low income housing in both the 1987 and 1990 Acts include housing financed by a mortgage insured under the section 221(d)(3) market rate program and assisted under the rent supplement program, there is no indication that these references were intended to overturn HUD's long-standing regulatory prohibitions on prepayment for rent supplement projects.) The Department is aware that in some cases the mortgage note language for projects receiving rent supplement assistance does not prohibit prepayment without the Secretary's consent for the full mortgage term, and thus is inconsistent with the regulatory prohibition; however, in such cases the Department would view the regulatory prepayment prohibition as superseding any conflicting mortgage note language. Thus, HUD would not view such projects as being entitled, under the operative "regulation or contract," as being eligible for prepayment without HUD's consent, and would not consider such projects to be eligible low income housing. Likewise, if the applicable program regulations at § 221.524 or § 236.30 allow prepayment at the expiration of 20 years after final endorsement, but the mortgage note prohibits prepayment without HUD's consent for the full term of the mortgage, HUD would construe the regulation as superseding the prepayment prohibition in the mortgage note.

Fair Market Rent—The fair market rent is the section 8 existing fair market rent published for effect, applicable to the jurisdiction in which the project is located.

Federal Cost Limit—The Federal cost limit for a project is the greater of (a) an amount determined by multiplying 120 percent of the section 8 existing fair market rent published for effect for the market area by the number of units in the project (according to appropriate unit bedroom sizes) and (b) an amount determined by multiplying 120 percent of the prevailing rents in the relevant local market area in which the project is located by the number of units in the project (according to appropriate unit bedroom sizes). The Federal cost limit is used to determine whether an owner may proceed under the "voluntary sale" provisions of § 248.157 or under the "mandatory sale" provisions of § 248.161. If the transfer preservation rent does not exceed the Federal cost limit, the owner, if it seeks to transfer the project, must proceed under § 248.157; if the transfer preservation rent exceeds the Federal cost limit, the owner seeking to transfer the project must proceed under § 248.161.

In addition, the Federal cost limit provides an upper ceiling to the incentives and determines the types of incentives that may be obtained under § 248.153, since the rent stream obtainable through the incentives under § 248.153 may not exceed the Federal cost limit. See sections 215(b)(2)(A) and (B), 219(a) and 220(a) of the statute. While rents for individual units assisted by section 8 may exceed the Federal cost limit, the projected rental income stream for the entire project may not exceed the Federal cost limit for the project.

Federally-assisted Mortgage—The definition in the proposed rule includes the first mortgage that is insured, held or assisted by HUD, plus any operating loss loan or loan insured by HUD under part 241. The definition of "preservation equity" in the 1990 Act refers to "federally assisted-mortgage or mortgages" for the project, and thus appears to imply that loans in addition to the first mortgage could qualify as federally-assisted mortgages. The Department would take into account any operating loss loan or existing section 241 loan when calculating the aggregate preservation rents under § 248.121.

Homeownership Program—A homeownership program for purposes of this subpart is a program, proposed by a resident council, that meets the requirements established under § 248.173. A plan of action in which the tenants intend to operate the project as a nonprofit rental project would not constitute a homeownership program.

Low Vacancy Area—The proposed rule defines "low vacancy area" to mean a market area in which the supply of vacant, available rental housing units is not sufficient to allow for normal growth, and mobility, taking into account the need for vacancies resulting from turnover and for meeting growth in renter households. Such a level of vacancy is the minimum level, below which the range of choice is very limited and mobility is restricted or restrained.

Nonprofit Organization—A nonprofit organization is defined as a chartered or organized entity that is not operating for profit, that complies with HUD's standards of financial accountability, and that has as a principal purpose significant activities related to the provision of housing for low income families. As noted above, the Conference Report expresses the Conference Committee's intent that qualified nonprofit organizations "essentially conform" with the requirements established for community housing development organizations under the HOME program authorized under title II of the 1990 Act. However, the definition of community housing development organization in section 104(6) of the 1990 Act requires, *inter alia*, that the organization have a history of serving the local community or communities in which the housing is to be located. The Department envisions that a nonprofit organization under title VI of the 1990 Act could be an organization that is founded specifically in response to the opportunities made available under the statute, in which case the organization would not have any "history" of service. Therefore, the Department has adopted in the proposed rule the language verbatim from section 229(11) of the statute, and has not included standards from the definition of community housing development

corporation. However, the proposed rule addresses Congress' interest in supporting community housing development organizations by establishing a priority for community-based nonprofit organizations in the procedures for selecting among priority purchasers that make bona fide offers. See § 248.157.

Notice of Intent—The definition of notice of intent differs slightly under subpart B and subpart C. Under subpart C, it is defined as the owner's notification of its intent to prepay the mortgage, terminate the mortgage insurance contract, or amend the mortgage or regulatory agreement. Under subpart B, a notice of intent is defined as the owner's notification of its intent to prepay, terminate the insurance contract, extend the low income affordability restrictions or transfer the project to a qualified purchaser.

The notice of intent is not binding on the owner. Based on the results of the appraisal, or other reasons, the owner may generally change its intentions regarding the property. However, once an owner accepts an offer to purchase the project (or, under § 248.161, receives an offer to purchase the project), the owner is required to consummate the sale, if possible.

Plan of Action—The proposed rule defines the plan of action as a plan providing for the termination of low income affordability restrictions, extension of low income affordability restrictions, or transfer of the project to a qualified purchaser. A homeownership program submitted to the Secretary pursuant to § 248.173 constitutes a plan of action for purposes of subpart B.

Preservation Equity—In the proposed rule, preservation equity has two different definitions depending on whether the owner of an eligible low income housing project intends to retain the property and extend the low income affordability restrictions or transfer the project to a qualified purchaser who will agree to retain the restrictions. The extension preservation equity is extension preservation value less the outstanding balance of any debt secured by the property, whether in the form of a federally-assisted mortgage or other mortgage. The statute defines preservation equity as preservation value less "any debt secured by the property." The Department interprets this phrase to mean the "outstanding balance" of any debt secured by the property. The transfer preservation equity is the transfer preservation value of the project, less the outstanding balance of the federally-assisted mortgage(s) secured by the project at the time that the transfer preservation equity is calculated.

Preservation Value—Like preservation equity, the proposed rule also establishes two different definitions for preservation value, depending on the owner's intentions for the property. The extension preservation value is the fair market value of the project based on the project's highest and best use as multifamily market-rate rental housing. The transfer preservation value is the fair market value of the project based on the project's highest and best use. In either case the appraisal must take into account the costs that the owner could reasonably expect to incur in order to achieve the use upon which the value is based. For example, if the highest and best use of the property is based on replacement of the project by a shopping center, the appraiser would, in addition to examining the value of comparable raw land parcels suitable for shopping center development, take into consideration demolition and relocation expenses.

Priority Purchaser—Resident councils organized to acquire a project under a HUD-approved homeownership program, and nonprofit organizations and State and local government agencies agreeing to maintain the low income affordability restrictions for the remaining useful life of the project, are deemed priority purchasers and as such are given the first opportunity to purchase projects offered for sale pursuant to this subpart. In addition, such purchasers may receive reimbursement for transaction expenses related to acquisition of the project. Moreover, only priority purchasers are eligible to receive grants under section 220(d)(3)(B) of the statute and § 248.157(o) of the proposed rule. (Both priority and other qualified purchasers are eligible to receive grants under section 221(d)(2) of the statute and § 248.161(d) of the proposed rule.)

Section 236(j)(4) of the National Housing Act, 12 U.S.C. 1715z–1, provides that a mortgage is eligible for insurance under section 236 only if executed by a "private mortgagor" eligible under section 221(d)(3) or section 221(e). However, recent legislation, including title VI, makes clear that Congress intends State and local government agencies to be eligible purchasers of section 236 projects in the context of plans of action under subpart B of part 248. Section 203(a)(1) of the HUD Reform Act amended section 236(b) to provide that interest reduction payments may be made with respect to a mortgage on a project owned by a public entity, and section 203(c)(2) of the HUD Reform Act amended section 241(f)(3), as enacted by the 1987 Act, to make public entities purchasing eligible low income housing projects eligible to receive an equity loan insured under section 241(f). The legislative history of the HUD Reform Act indicates that these amendments were included in the Senate bill to "(make) public entities eligible mortgagors to acquire section 236 projects." Cong. Rec. H9686 (daily ed. November 21, 1989) ("Changes Made in the Senate Amendment to H.R. 1, the HUD Reform Act of 1989"). The inclusion of State or local government agencies in the definition of priority purchaser under section 231(a) of title VI is further evidence of Congress' intent in this regard. Therefore, under the proposed rule, State or local government agencies can be priority purchasers with respect to section 236 projects as well as other eligible low income housing projects.

The Department construes the definition "nonprofit organization" in the statute and in the proposed rule as including a tenant organization that seeks to purchase the project and operate it as a rental project, provided the organization otherwise meets the definition of "nonprofit organization." (see definition of "resident council," below).

A purchaser that consists of a nonprofit organization or governmental entity that is affiliated with a for-profit entity for purposes of purchasing the project would not constitute a priority purchaser, but could constitute a qualified purchaser. This includes cases where Low Income Housing Tax Credits are allocated to a non-profit entity in connection with the purchase of a project. Additionally, if a nonprofit organization, after receiving assistance and at any time while a plan of action is in effect, becomes affiliated with a for-profit entity or transfers the project to a for-profit entity, the Secretary shall seek reimbursement from the nonprofit purchaser for any assistance provided to it by virtue of its status as a priority purchaser.

Related Party—The definition is derived primarily from sections 231 (c) and (d) of the 1990 Act. The proposed rule elaborates on the statutory definition by making clear that if any member of the board of directors of the purchaser is an employee, officer or director of the owner, of if the owner has made or intends to make a loan or grant or provide other financial assistance to the purchaser in connection with the transfer of the project, the purchaser and the owner would be deemed "related parties."

Relevant Local Market—The proposed rule defines a relevant local market for a project as being an area geographically smaller than the market area established by the Secretary for purposes of determining the section 8 existing fair market rent, and that is identifiable as a distinct rental market area. In nonmetropolitan areas, where comparable multifamily projects might not exist in the same specific geographic locality, it is customary for appraisers to use comparables in other noncontiguous localities that have similar market characteristics. Appraisers may employ this practice with regard to nonmetropolitan areas as long as the noncontiguous localities are within the same county and have similar market characteristics. If there are no comparables in the relevant local market area in terms of physical conditions, use restrictions and other factors and it is not otherwise possible to determine prevailing rents in that area, the section 8 existing fair market rent shall be the sole measure for determining the Federal cost limit.

Relocation Expenses—The definition of relocation expenses is derived from the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91–646, 42 U.S.C. 4601 *et seq.*, and is consistent with the HOPE Program Guidelines. Under this definition, relocation expenses must include, at a minimum, payment for advisory services, referrals, and payment for actual, reasonable moving expenses.

Remaining Useful Life—Subpart B of the proposed rule requires all owners and purchasers of projects who accept incentives pursuant to this subpart to maintain the low income affordability restrictions on the project for the project's remaining useful life. This is a departure from the provisions of the existing rule, which requires maintenance of the low income affordability restrictions only for the remaining term of the original mortgage, a period of approximately eighteen years. The remaining useful life of a project under subpart B is the structure's anticipated physical life, assuming normal maintenance and repairs and replacement of major systems and capital components as necessary. The Department construes section 222(c) of the 1990 Act as requiring that the remaining useful life of a project would be at least 50 years from the date of approval of a plan of action under subpart B, since an owner is precluded, until that date, from petitioning the Department for a determination that a project's remaining useful life has expired. The Department will establish standards and procedures for determining when the useful life of a project has expired.

Resident Council—The proposed rule adopts the definition stated in section 229(11) of the 1990 Act. Only entities qualifying as resident councils may purchase a project pursuant to a homeownership program under § 248.173. However, the Department recognizes that a tenants' organization may seek to purchase a project as rental housing and not under a homeownership program. Such a tenant organization would not be limited to purchasing the project under a homeownership program, even if the organization met the formal elements of the definition of resident council.

Special Needs Tenants—The proposed rule defines special needs tenants as those who are "Elderly Persons," "Elderly Families," "Disabled Persons," or families that include a "Disabled Person," all as defined in 24 CFR 812.2. The Department specifically invites comments as to any other categories of tenants that should be included within the definition of special needs tenants.

Tenant Representative—The proposed rule's definition of tenant representative includes a designated officer of an organization of the project's tenants, a tenant who has been elected to represent the tenants of the project, and individuals and organizations, such as legal aid organizations and other nonprofit organizations, that have been formally designated or retained by an organization of the project's tenants to represent the tenants. In any case, the tenant representative must represent the tenants residing in at least 50 percent of the currently occupied units. The tenant representative must be elected or appointed by the project's tenants themselves and not by an outside entity. The Department recognizes that situations may occur in which more than one person or organization may claim to represent the tenants. In such situations both persons or organizations would be considered tenant representatives for purposes of receiving notifications and information under the proposed rule, until such time as the tenants resolve collectively who is to be their representative.

Voluntary Termination of Mortgage Insurance—The proposed definition of "voluntary termination of mortgage insurance" is derived from § 207.253 of this chapter. That section provides that the mortgagor and mortgagee may jointly request that the Secretary terminate insurance on a mortgage. Such termination of insurance has the effect of discharging the regulatory agreement (since that agreement, by its terms, is in effect only as long as the mortgage is insured or held by HUD) and thereby terminating the low income affordability restrictions that are tied to the federally-assisted mortgage.

Section 248.103 (General Prepayment Limitation)

This section generally states that owners of eligible low income housing may not prepay a mortgage or terminate a mortgage insurance contract without first receiving approval from the Secretary of a plan of action submitted pursuant to this subpart. The provisions of this section are identical to that of § 248.203 of subpart C, except that this section also implements section 211(b) of the 1990 Act by prohibiting mortgagees from foreclosing on, or acquiring by deed in lieu of foreclosure, eligible low income housing projects unless the mortgagee conveys title to the project to the Secretary in connection with a claim for insurance benefits. This provision was apparently enacted in order to prevent collusion between an owner and an insured mortgagee to contrive a foreclosure and enable the owner to redeem the project at foreclosure (or purchase it through a straw party), thereby circumventing the prepayment restrictions of the statute.

State agencies which hold mortgages on non-insured State agency projects do not have the right to receive insurance benefits in exchange for conveying the project to the Secretary. Therefore, § 248.103(c) is limited in its applicability to insured projects. The Department assumes that if a State agency is forced to foreclose on a project that is eligible low income housing, it will take whatever steps are necessary to ensure that the project is preserved after foreclosure as low and moderate income housing.

The penalties set forth in both this section and in § 248.203 for violating the prepayment limitations include a rescission of the prepayment, reinstatement of the mortgage insurance contract, and a declaration that the unlawful prepayment or termnation is null and void.

Section 248.105 (Notice of Intent)

The procedure for owners to notify the Secretary of their intent to prepay, terminate a mortgage insurance contract, extend the low income affordability restrictions, or transfer the project to a qualified purchaser, are set forth in § 248.105 of subpart B of the proposed rule. Any owner of eligible low

income housing, as defined in subpart B, may submit a notice of intent to the Secretary within 24 months of the date the owner would be contractually eligible to prepay in the absence of this regulation. By contrast, due to the definition of eligible low income housing applicable to subpart C, owners may file notices of intent under that subpart only within one year of being eligible to prepay in the absence of the regulation.

Section 212(c) of the 1990 Act provides that an owner shall not be eligible to file a notice of intent if the mortgage (a) falls into default on or after November 28, 1990, or (b) fell into default before, but is current as of, that date, and the owner does not agree to recompense the appropriate insurance fund, in an amount that HUD determines to be appropriate, for any losses sustained by the insurance fund as a result of any workout or other arrangement agreed to by HUD and the owner with respect to the defaulted mortgage. The statute further directs HUD to carry out this provision in a manner consistent with the provisions of section 203 of the Housing and Community Development Amendments of 1978, 12 U.S.C. 1701z–11.

With respect to loans that fall into default on or after November 28, 1990, the proposed rule provides that the default will disqualify the owner only if the mortgage is held by HUD at the time of the default or if the insured mortgage is assigned to HUD as a result of the default. Thus, if the mortgage falls into default after November 28, 1990, but the owner cures the default prior to the assignment of the mortgage to HUD, the owner would be entitled to file a notice of intent.

The proposed rule also applies this standard to an owner of a project whose mortgage fell into default prior to November 28, 1990 and has continued in default after that date. Although the statute does not specifically address this situation, it would be incongruous to treat such projects differently than projects that fall into default after November 28, 1990. However, if the owner entered into a workout agreement with HUD prior to November 28, 1990 and has continued to comply with the terms of the workout past that date, the owner would be entitled to file a notice of intent, provided the owner brings the mortgage current and recompenses the appropriate insurance fund before filing the notice of intent.

The Department construes the exclusion for projects that fall into default after November 28, 1990 to be applicable even if the default occurred when the project was owned by a former owner; a contrary interpretation would enable owners to evade the prohibition simply by transferring the project. Moreover, this interpretation is more consistent with the plain language of the statute, which refers to the mortgage falling into default, rather than the owner (i.e., the party filing the notice of intent) defaulting under the mortgage.

The Department has also added the requirement that owners who file a notice of intent pursuant to this subpart may not receive incentives unless the mortgage is current at the time of approval of the plan of action. See § 248.145(a)(11).

With respect to mortgages which fell into default prior to November 28, 1990, but were current as of that date, the Department will require, as a condition to eligibility for filing a notice of intent, that the owner repay the Department for any debt forgiven by HUD in connection with a workout arrangement or modification agreement. The Department notes, however, that the Department has rarely forgiven debt in connection with such workouts. The amounts to be repaid would not include reserve for replacements or other escrow deposits that HUD agreed to waive as part of the workout or modification.

The purpose of the allusion to section 203 of the Housing and Community Development Amendments of 1978, which prescribes goals and requirements for the management and disposition of HUD-owned projects and projects with HUD-held mortgages in default, and authorizes HUD to enter into partial payments of claim transactions, is unclear. Therefore, the statutory reference to section 203 is not reflected in the proposed rule.

Both subparts B and C list those parties to whom a copy of the notice of intent must be sent. The 1987 Act does not specify that a copy of the notice of intent be delivered to each tenant; however, the existing rule includes such a requirement. See § 248.211 of subpart C. Similarly, while section 230 of the 1990 Act provides that notification of information to tenants may be accomplished by posting in an accessible location in all affected buildings and delivery to a representative of the tenants, if one exists, the Department has interpreted this as a minimal standard of notice and in the proposed rule requires that a copy of the notice of intent be given to each tenant. In addition, the rule provides that if the project contains a substantial number of tenants that do not speak English, the notice of intent must be written in a language understood by such tenants.

The reason for these requirements is twofold. First, at this early stage in the prepayment process, it is likely that the Secretary and the owner will be unaware of the existence of a tenant representative, and hence could fail to fulfill the statute's notification requirements by merely posting a copy of the notice. By providing a copy of the notice of intent containing instructions for the tenants to notify either the owner or the Secretary of the identity and address of any representative, if one exists, the owner and the Secretary will be able to establish at an early stage in the process who the tenant representative is, and ensure that the tenant representative receives notification as the statute directs. Second, notification to all affected tenants at the time of submission of a notice of intent provides these tenants with the maximum opportunity for taking an active role in the prepayment process, including the opportunity to organize and seek assistance to purchase the project if it is to be sold.

Section 248.105 includes a requirement that the owner provide each tenant with a HUD-prepared summary of the 1990 Act, which will describe in summary form the possible outcomes for the project, including homeownership. The summary will explain in simplified terms what impact the filing of the notice of intent may have on the tenants. Although not required by statute, the Department has added this requirement because of the complexity of the legislation. The summary, like the notice of intent itself, will be posted in each affected building in the project.

Section 248.111 (Appraisal and Preservation Value of Eligible Low Income Housing)

This section implements section 213 of the statute by establishing the procedure for appraising eligible low income housing for which the owner has submitted a notice of intent to transfer the project or to extend its low income affordability restrictions. Two appraisals must be conducted within the four months following submission of a notice of intent to transfer the project or extend its low income affordability restrictions. Both the owner and the Secretary shall retain an independent appraiser to conduct an appraisal of the property. Both appraisers shall possess the same minimum qualifications, to be established by the Department, and shall conduct the appraisals using the same specifications, also to be established by the Department, to determine the project's extension and transfer preservation values. If the appraisals yield different preservation values, the proposed rule establishes a

one month period during which the owner and Secretary will attempt to reach agreement as to the project's preservation values based on the results from both appraisals. While the statute does not limit the negotiation period to one month, the Department has determined that in order to comply with the strict time frame which runs throughout the prepayment process and which depends in part on the determination of the project's preservation values, a reasonable time limitation is needed. HUD expects that it will be able to reach agreement with the owner regarding the preservation values if, after review of the two appraisals by the Department, it determines that the discrepancy between the appraisals is no more than 5 percent of the lower appraisal. If agreement cannot be reached within the one month period, the owner and the Secretary must jointly select a third appraiser whose determination of preservation values shall be binding on both parties.

The Department interprets the requirement for "independent appraisers" to mean that the appraisers must not be employees of the Federal Government and may also not be employees or officers of any entity that is affiliated with the owner.

Under title 11 of the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989, Public Law 101–73, 12 U.S.C. 3310 *et seq.*, appraisals performed in connection with federally-related transactions must be conducted by individuals certified or licensed by the State in accordance with the Act's requirements. States are scheduled to have licensing procedures and standards in place by December 31, 1991. The Department will require that all appraisals conducted under subpart B must be done by an appraiser approved by the State under these standards, and that the appraiser must also have six years of appraisal experience, including three years of multifamily property appraisal experience.

The Department is currently developing more detailed procedures for the selection, procurement, instruction and compensation of appraisers under the 1990 Act. These procedures will be included as part of the field instructions implementing these regulations. Such procedures may, consistent with the proposed rule, provide for the establishment of an open-ended "roster" of approved HUD appraisers, from which "HUD's" appraiser and the third appraiser, if needed, would be selected.

The appraisal procedure provides for the estimation of both the extension and transfer preservation values for each project. The former would equal the appraised fair market value of the project as multifamily rental housing less certain adjustments. The latter would equal the appraised "highest and best use" value of the property less certain adjustments. The former figure is the preservation value of the project for purposes of providing incentives in the event that the owner retains the property, while the latter is the preservation value in the case of the transfer of the project to a qualified purchaser. The proposed regulation requires that both of these values be determined for all appraised projects regardless of the owner's intentions as specified in the notice of intent. This is consistent with section 216(b)(1) of the statute, which states that HUD shall provide the owner with the preservation value determined in accordance with the residential rental standard and the highest and best use standard.

For the purpose of determining the preservation values, the statute directs appraisers to use the greater of actual project operating expenses at the time of the appraisal, based on the average of the actual project operating expenses during the preceding three years, or projected operating expenses after conversion. The Conference Report at page 462 states that the purpose of using average expenses is to enable an appraiser to adjust for extraordinary and nonrecurring costs that make the current year operating expenses abnormally high or low. The Conference Report then states that if current year operating expenses are higher than that of the preceding years and the Secretary determines that this is not due to extraordinary or nonrecurring costs, and that the operating expenses are not expected to decrease, then current year operating expenses should be used in making the comparison with post-conversion expenses. Conversely, where project operating expenses are lower in the current year than in preceding years and are expected to continue at the lower level due to energy efficiencies or rehabilitation, these reductions should be accounted for, and current year expenses, rather than the average expenses during the preceding three years, should be used in comparison with post-conversion expenses.

The Conference Report at page 462 states that the appraiser must take into account any use agreements entered into by the owner when determining value. The Department construes the term "use agreements" in this context to include provisions in the mortgage note prohibiting prepayment without the consent of the State housing finance agency or other such entity or agency. Clearly, if such a prohibition exists and the agency's position is that prepayment would not be approved unless the project were maintained as low and moderate income housing for an extended period of time, the impact of the prepayment prohibition on the appraised value of the project would be quite substantial. In addition, the Conference Report directs HUD to examine the Committee Report accompanying the Senate bill with respect to its discussion of the types of costs that owners would incur in the event of prepayment and conversion. The Senate Report (Senate Report No. 101–316, 101st Cong., 2nd Sess., dated June 8, 1990) (the "Senate Report") notes at page 110 that conversion costs vary widely by jurisdiction, especially because of differences in State and local laws governing conversions, rent control and zoning; in addition, the Senate Report states that the appraiser must take into account the availability of financing for potential purchasers of cooperative shares or condominium units. It further provides that conversion costs must assume rehabilitation to a market standard, and must take into account both hard and soft costs, including losses due to vacancies, rent skips, rent withholding, legal costs, advertising, etc. HUD will require that the appraisers include a capital needs assessment as part of the appraisal for this purpose. The Senate Report points out that in estimating such costs, the income distribution of the current tenants and the gap between current rents and market rents must be taken into account. The appraisal instructions to be issued by the Department will discuss all of these considerations.

Although the appraised value will take into account the cost of adding amenities, making upgrades and otherwise elevating the quality of the housing up to its highest and best residential use, and will estimate project value based on such upgraded condition, such amenities and upgrades will not be financed as part of the plan of action. The incentives will finance repairs necessary to restore the project to its original physical standards for occupancy, to account for any required capital improvements, as identified by HUD, and to fund operating reserves needed to maintain the project at that level of quality. The appraisal must also estimate the repairs and replacements needed to meet these housing standards, since HUD will rely on such information in calculating the aggregate preservation rents under § 248.121.

Section 213(a)(3) of the statute provides that the Secretary may provide

incentives only based upon an appraisal that is not more than 30 months old. The appraised values used in determining the preservation values shall be the appraised values as of the date that the appraisal is "conducted," i.e., the date on which it is signed and delivered to HUD or the owner. No adjustment shall be made to take into account projected trends in real estate values or the length of time required to transfer a project or receive incentives under subpart B.

Section 248.121 (Annual Authorized Return and Aggregate Preservation Rents)

This provision, which implements section 214 of the statute, establishes the procedure for determining the aggregate preservation rents, which are the incomes required to meet certain project costs if the project is to be preserved for low income families. These project costs include debt service on any rehabilitation loan or federally-assisted mortgage, project operating expenses, adequate reserves, an annual authorized return if the project is retained by the owner, and debt service on an acquisition loan if the project is sold to a qualified purchaser.

Given that a project's aggregate preservation rents must be calculated at an early stage in the prepayment process, certain project costs covered by aggregate preservation rents may need to be estimated by the Department. For this reason, the Department has established guidelines for making these determinations. For instance, to determine the debt service on a rehabilitation loan for the project, the loan amount will be based on the estimates made in the appraisals conducted under § 248.111, and market rate interest rates will be assumed. Additionally, rehabilitation funds contributed by State or local government agencies to the project will be deducted from the potential loan amount. To calculate the debt service on an acquisition loan if the project will be sold to a qualified purchaser, the Department will assume that the sale price is equal to the transfer preservation value of the project, and that the Department will provide the maximum acquisition loan allowable under part 241 of this title.

Adequate reserves will be determined by calculating the amount that must be added to existing reserves and sustained on a continuous basis in order to ensure that the project will be able to meet housing quality standards. This estimate will take into account preventive maintenance, necessary replacements and future repairs.

One component of the extension preservation rent is the amount which would enable the owner to realize the annual authorized return. This section states that annual authorized return "shall be equal to 8 percent of the (project's) extension preservation equity." The Department interprets this to mean that while an owner is authorized an 8 percent annual authorized return, the statute does not necessarily guarantee this distribution on an annual basis. This is particularly true during the first three years of implementation of a plan of action when rent increases for tenants residing in the project at the time a plan of action was executed must be phased in and the project has a substantial number of tenants that do not receive section 8 assistance. See § 248.145(a)(6). HUD will approve rents at a level that ensures that owners receive the full annual authorized return beginning in the third year. Moreover, if the owner is unable to realize the full 8 percent annual authorized return in any year, including the first three years, the owner may accrue the amount not realized, and realize that amount in later years through withdrawal of residual receipts. Under the plan of action owners would also be entitled to withdraw residual receipts or take distributions of surplus cash in order to realize distributions that had accrued prior to implementation of the plan of action.

Section 248.123 (Determination of Federal Cost Limit)

This section implements section 215(a) of the statute. Pursuant to this section, aggregate preservation rents determined in § 248.121 for each project are compared to the Federal cost limit for the area in which the project is located.

The extension or transfer preservation rent of a project exceeds the Federal cost limit if it exceeds, for the same number and size of units as the project, both 120 percent of the section 8 existing fair market rent in the market and 120 percent of the prevailing rents in the relevant local market in which the project is located.

Section 248.127 (Limitations on Action Pursuant to Federal Cost Limit)

This section, implementing section 215(b) of the statute, governs the procedure to be followed based on the owner's intentions for the project, as stated in the notice of intent submitted pursuant to § 248.105, and based on whether or not the extension or transfer preservation rent for the project exceeds the Federal cost limit.

With respect to owners that seek to retain the project, the extension preservation rent must be compared to the Federal cost limit. If the extension preservation rent is within the Federal cost limit, the owner may file a plan of action to receive incentives. If the extension preservation rent exceeds the Federal cost limit, the owner may likewise receive incentives, but the amount of the incentives may not exceed an amount that can be supported by a projected income stream equal to the Federal cost limit. In that event, the owner would only be entitled to receive as much of the annual authorized return as could be supported by an income stream capped at the Federal cost limit, after taking into account debt service on the rehabilitation loan and on the federally-assisted mortgage, project operating expenses and payments for adequate reserves.

The transfer preservation rent is compared to the Federal cost limit in order to determine the owner's options with respect to sale of the project. If the transfer preservation rent does not exceed the Federal cost limit, the owner may file a second notice of intent to transfer the project pursuant to § 248.157. If the transfer preservation rent exceeds the Federal cost limit, the owner may either (a) file a second notice of intent indicating an intention to transfer the project under § 248.157 at a price which will result in project rents that, on an aggregate level, do not exceed the Federal cost limit; or (b) file a second notice of intent indicating an intention to transfer the project under § 248.161. Under any of these options, if no bona fide offers are received, the owner may prepay the mortgage or voluntarily terminate the mortgage insurance.

(The statute, at section 215(b)(2)(B), states that the owner shall agree to transfer the project at a price "that shall not exceed the Federal cost limit." Since the Federal cost limit is a rent level and not an amount corresponding to a sales price or project value, the Department construes the statutory language to mean that the purchase price, when combined with the other components of the transaction, requires an income stream which may not exceed the Federal cost limit.)

Section 248.131 (Information From the Commissioner)

This provision implements sections 216 (a), (b) and (c) of the statute. Once a notice of intent is submitted to the Secretary by an owner of eligible low income housing, the Secretary has a specified period of time in which to respond by supplying the owner with the necessary information for filing a

plan of action. The specific information which the Secretary must provide the owner, which varies depending on whether the owner has submitted a notice of intent to terminate or to extend the low income affordability restrictions on the project, is listed in this section.

In the case of a notice of intent to terminate the low income affordability restrictions, section 223(a) of the 1987 Act directed the Secretary to furnish the owner with "any relevant market area demographic information that the Secretary has custody of and that the owner may use in preparing the plan." The 1990 Act does not include this requirement; however, the Conference Report at page 460 directs the Secretary to furnish such information, and the proposed rule includes this requirement.

Section 216(c) specifies that the Secretary shall make available to the tenants the information supplied to the owner under section 216 and any other information relating to the rights and opportunities of the tenants. If the owner has expressed an intent to transfer the project, the Secretary shall provide the tenants with information concerning their opportunity to become a priority purchaser or to organize as a resident council for purposes of purchasing the project under a homeownership program.

Section 248.133 (Second Notice of Intent)

This section, implementing section 216(d) of the statute, requires submission of a second notice of intent to the Secretary by owners who intend to transfer the project to a qualified purchaser either under § 248.157, or in connection with a mandatory sale, prepayment or termination under § 248.161. The second notice of intent must be submitted not later than 30 days after receiving the financial information on the project from the Secretary under § 248.131. The second notice of intent would generally conform to the requirements for the initial notice of intent, except that copies would not have to be delivered to every tenant. Instead, the owner would be required only to post the notices in each occupied building and send a copy to the tenant representative(s), if any.

The Department recognizes that during the lengthy prepayment process created by the 1990 Act and this proposed rule, some owners may alter their original intentions for the project which were communicated to the Secretary in the notices of intent submitted under § 248.105. Owners may be especially likely to alter their decisions after receiving the projects' financial information which was derived from the appraisals and which may limit the owners' options for proceeding under this subpart. If the owner originally indicated an intent to retain the project and then decides to transfer the project, the second notice of intent will provide HUD, the State or local government and tenants with advance notice of that intent. If the owner originally indicated an intent to transfer the project and then decides to retain it, the owner would file a plan of action based on its revised intentions, without the necessity of a second notice of intent.

The submission of a second notice of intent commences the 12-month period during which owners may negotiate a sale and sell the project only to priority purchasers.

Section 248.135 (Plans of Action)

This section prescribes deadlines and procedures for submission of the plan of action, the contents of the plan of action, the procedures for revisions to the plan of action, and the consequences for failure to file the plan of action. Paragraph (b) provides that a plan of action involving transfer of the project must be submitted jointly by the owner and the purchaser within 90 days after the owner's acceptance of a bona fide offer under § 248.157 or the purchaser's making of a bona fide offer under § 248.161. The Department believes that this procedure will minimize confusion and the possibility for misunderstanding between the parties. Paragraph (c) provides in part for notification of the tenants through posting in each occupied building a summary of the plan of action and delivery of a copy of the plan of action to the tenant representative, if any. In addition, the summary must indicate that a copy of the plan of action shall be available in a convenient location for inspection and copying.

Paragraph (e) describes the contents of a plan of action involving incentives or a transfer of the project. Paragraph (e)(2) requires the owner to submit cash flow projections, and analyses of how the owner will address any physical or financial deficiencies and maintain the low income affordability restrictions on the project. The Department's implementing instructions will require the owner to submit a five-year pro forma analysis of cash flows. The analysis of physical deficiencies must describe how the owner will make any repairs and deferred maintenance needed to sustain the project at a level that meets section 8 housing quality standards and local housing codes. The analysis of financial deficiencies must describe how the owner will address any accounts payable, deficiencies in reserves or other escrows, and other delinquencies.

Paragraph (f) provides in part that any revisions to the plan of action must be delivered and made available to HUD, the State or local government, the tenants and the tenant representative, if any, in the same manner as the original plan of action. Thus, for example, a summary of the revision would be posted in each occupied building in the project and a copy made available in a convenient location for inspection and copying by the tenants.

Section 248.141 (Criteria for Approval of a Plan of Action Involving Prepayment or Voluntary Termination)

Section 218(a) of the 1990 Act is identical to section 225 of the 1987 Act, and thus the Department's implementation of the two provisions will be consistent. The Department views section 218(a), and thus § 248.141 of the proposed rule, as constituting a basis for prepayment or voluntary termination that is independent of other restrictions in the statute. That is, an owner whose project meets the standards for prepayment under § 248.141 is not required to comply with any other standards in subpart B regarding protection of tenants or availability of affordable housing, and the standards in § 248.141 are inapplicable to any prepayment or voluntary termination that is permitted under § 248.169.

Section 248.145 (Criteria for Approval of a Plan of Action Involving Incentives)

This provision implements sections 222 (a) through (c) of the statute. An initial determination will be based on the appraisals which establish the preservation value of a project. The appraisals will determine whether or not the project has any "preservation equity" and, if so, the amount the incentives which could be made available to owners under this subpart. A "windfall profits" test pursuant to section 222(e) of the statute will also be conducted to determine whether a project is located "in those rental markets where there is an inadequate supply of decent, affordable housing." If not, and if the provision of incentives would not serve "other public policy objectives," then no incentives will be made available to owners. A report on section 222(e) explaining how the "windfall profits" test will be applied is being transmitted to Congress.

In establishing the level of incentives to be provided by the Department, HUD will take into account any Low Income

Housing Tax Credits and assistance provided to a project by State and local governments and that will be used in connection with a plan of action pursuant to section 102(d) of the Housing and Urban Development Act of 1989. The Department will exercise due diligence in reviewing and evaluating plans of action to assure that a package of incentives is the least costly alternative to HUD and that it is consistent with the full achievement of purposes of the statute.

Paragraph (a)(8) provides that rents for new tenants shall be set at levels that will ensure, to the extent practicable, that the units will be affordable to existing proportions of very low, low and moderate income tenants. Although the statute and the proposed rule explicitly state that this limitation shall not prohibit a higher proportion of very low income families and persons from occupying the project, the Department does not construe this as meaning that HUD must provide additional section 8 assistance if the owner selects additional very low income (and correspondingly fewer moderate income) tenants during the term of the plan of action. The maximum level of section 8 assistance for the project authorized under the plan of action is established at the time of plan of action approval. If the owner admits additional very low income tenants at a later date, such tenants must be subsidized by the project itself or by other sources of assistance, such as a separate allocation of section 8 Loan Management Set-Aside assistance.

The Department intends to use the same standards of affordability for new tenants as are applicable to current tenants under paragraph (a)(5), namely, the lower of the section 8 existing fair market rent published for effect or 30 percent of adjusted income.

Section 222(a)(2)(G)(i) of the 1990 Act provides that future rent adjustments shall be made "by applying an annual factor (to be determined by the Secretary) to the portion of rent attributable to operating expenses for the housing and by making changes in the annual authorized return under section 214." The reference in the statute to changes in the annual authorized return appears to be a vestige from a previous version of the bill, in which the authorized return was not fixed at 8 percent preservation equity, but instead was adjusted annually; therefore, this reference is not reflected in the proposed rule.

With respect to the use of an annual factor based on increases in operating expenses, the Department would not be able to develop such a factor if the intent were similar to the intent underlying the requirement that was included in section 8(c)(2)(D) of the United States Housing Act of 1937, as added by section 371(b) of the Housing and Community Development Amendments of 1981. That provision stated that the Secretary shall limit increases in contract rents for section 8 construction and substantial rehabilitation projects to "the amount of operating cost increases incurred with respect to comparable rental dwelling units of various sizes and types in the same market area * * *." On December 22, 1986, the Department informed the Congress that the provision was "inherently flawed because of the absence of 'normal' year-to-year changes in operating expenses * * *." At the Department's initiative Congress repealed section 8(c)(2)(D). See section 142(e) of the Housing and Community Development Amendments of 1987. Some localized data are available to describe wages, prices and costs. The Department is investigating whether these can form a meaningful basis for a rent adjustment procedure. If it is determined that it is not feasible to adjust rents on the basis of currently available data, the Department may seek a technical amendment eliminating the requirement in section 222(a)(2)(G)(i) that HUD use an annual adjustment factor for operating costs. In the meantime, the proposed rule tracks the statutory language.

Paragraph (a)(10) provides that any savings from reductions in operating expenses due to management efficiencies shall be deposited in the reserve for replacement escrow, and the owner shall have periodic access to such reserves, to the extent that the reserve for replacements is adequate and the housing is maintained in accordance with the standards established in § 248.147.

Paragraph (b) provides that no incentives (other than to qualified purchasers) shall be provided, until the Secretary determines that the project meets the housing standards set forth in § 248.147, except that incentives designed to correct deficiencies in the project may be provided. Thus, if a project does not currently meet the housing standards set forth in § 248.147, the proceeds of a capital improvements loan or rehabilitation loan could be disbursed as needed to correct the deficiencies; other incentives would not be available to an owner retaining a project, but would be available to a qualified purchaser. In addition, no distributions would be permitted to either the owner or a purchaser until the housing standards have been met.

As noted above, the Department is not at this time establishing standards and procedures for making determinations of remaining useful life. Accordingly, sections 222(c)(2)–(4) of the statute have been restated in the proposed rule, but more specific standards and procedures will not be developed until a later date.

Section 248.147 (Housing Standards)

This provision implements section 222(d) of the statute. The rule states that eligible low income housing projects receiving incentives must be maintained in compliance with local codes in the jurisdiction where a project is situated and with the section 8 housing quality standards. Where a conflict exists between the two sets of standards, the stricter standard shall be applicable.

Paragraph (b) states that HUD will inspect each project at least annually for compliance with the housing standards. HUD will notify the owner of any deficiencies within 30 days after the inspection, and the owner will have 90 days in which to bring the project into compliance. HUD will reinspect the project once the repairs have been completed or at the expiration of the 90-day period, whichever is earlier.

The sanctions listed in paragraph (c) of § 248.147 could be imposed either if the owner initially fails to bring the project up to housing standards, or if an owner, after having met the housing standards, has allowed the project to fall below such standards during the term of the plan of action. Section 241(f)(5)(B) of the National Housing Act provides that advances of equity loan proceeds shall be phased in to reflect the phasing in of rent levels. In addition, under section 241(f)(2)(B)(ii) of the National Housing Act, as added by section 602 of the 1990 Act, the lender shall deposit on behalf of the owner 10 percent of the loan amount in an escrow account, controlled by the Secretary or a State housing finance agency approved by the Secretary, and such funds shall be made available to the owner upon the expiration of 5 years from the date that the loan is made, subject to compliance with the 1990 Act's housing standards requirements. Both of these requirements are reflected in § 241.1069 of the proposed rule. Section 248.147(c)(1) of the proposed rule provides that HUD may direct the mortgagee to withhold the disbursement of any such unadvanced equity loan proceeds. HUD would condition the release of the proceeds on the completion of repairs by the owner.

Section 222(d)(2)(A)(ii) of the statute authorizes HUD to reduce the annual authorized return until such standards

have been complied with and requires that the amounts withheld be used for repairs. In this context the reference to "annual authorized return" appears to mean the allowable annual distributions, and the proposed rule reads accordingly. The proposed rule states that HUD would prohibit the owner from taking the allowable distributions and direct that such funds be used instead to make required repairs. The owner would not be allowed to accrue the unpaid distributions. This sanction would remain in effect for as long as HUD determines that the project is not in compliance with the housing standards. Once the project is brought into compliance, the allowable distributions would be reduced to 50 percent of the otherwise allowable distributions for the following two years. The owner may accrue the balance during these two years for later distribution from surplus cash.

Paragraph (e) sets forth sanctions that are available to HUD in the event that a project fails to comply with the housing standards for two consecutive years. These provisions generally track the statutory language. With respect to paragraph (e)(2), HUD would direct the mortgagee to declare a covenant default and to accelerate the debt. This procedure is consistent with the enforcement mechanism available to HUD under 24 CFR 207.257.

Paragraph (f) is intended to clarify that the sanctions described in paragraphs (c) through (e) are in addition to, and not in substitution of, any sanctions or remedies that the Department may have under the mortgage, regulatory agreement, section 8 HAP contract or other agreement to enforce compliance with the owner's obligation to maintain the project in good repair and condition.

Section 248.149 (Timetable for Approval of a Plan of Action)

This section implements section 225 of the statute. Section 225(b)(2) states that if a plan of action is rejected on the basis of deficiencies, the Secretary shall give the owner a reasonable opportunity to revise the plan of action and seek approval. Paragraph (c) of the proposed rule limits this time period to 60 days, and provides further that if the owner fails to comply with this deadline and HUD fails to approve the plan of action within the time periods specified in paragraph (b), the owner will not be entitled to relief under paragraph (d). Paragraph (d) of the proposed rule provides that if the Secretary fails to approve a plan of action within the time periods specified in paragraph (b), HUD shall provide incentives and assistance in an amount that the owner would have received if the Secretary had complied with the time limitations, except that owners shall have no such right if the plan of action is not approved because of deficiencies.

Section 248.153 (Incentives to Extend Low Income Use)

Section 248.153 implements section 219 of the statute. The proposed rule lists the incentives specified in the statute, plus the incentive of increases in allowable distributions. Incentives would be capped so that the aggregate rents resulting from the incentives would not exceed the Federal cost limit. To the extent that section 8 rents and rents from unassisted tenants are insufficient in any given year to realize the full 8 percent return, the rule provides that the owner or purchaser may have access to existing and future residual receipts to make up the shortfall. Section 8 contract rents would be capped at the Federal cost limit.

The incentive limit stated in paragraph (a) is based on the extension preservation rent, which in turn assumes market-rate financing for any rehabilitation. If the Department provides below market-rate financing for the rehabilitation under the capital improvement loan program authorized by paragraph (b)(5), the Department would require corresponding adjustments of the rent levels for section 8 tenants.

Paragraph (b)(7) authorizes HUD to redirect the Section 236 Interest Reduction Payment subsidies to a second mortgage. The Senate Report at page 112 indicates that this provision is designed to "alleviate 'phantom income' problems caused by rapid amortization of the underlying section 236 mortgage;" it further points out that the redirected payments could be applied to subsidize interest on a rehabilitation loan provided the Secretary determines that withdrawing the subsidy from the section 236 mortgage will not present a risk of a mortgage insurance claim. The Department is uncertain whether this provision will achieve the objective stated in the Senate Report; in addition, it is unclear how the financial benefits, if any, of the redirection are intended to relate to the overall incentive scheme of the statute, since redirection is the only incentive which constitutes a potential "net after taxes" benefit. Nonetheless, the Department has included the provision in the proposed rule and specifically invites comments as to the effect such redirection may have on eligible low income housing projects and their owners.

Paragraph (b)(9) lists as an incentive an increase in allowable distributions, if necessary to enable the owner, in extension plans of action, to achieve the annual authorized return of 8 percent of the extension preservation equity. In addition, in cases where the project is being transferred to a for-profit qualified purchaser, incentives will be structured to enable the purchaser to realize an 8 percent return on investment.

Section 219(b) of the statute also includes language addressing the problem of reconciling section 236's excess income requirements with the incentive provisions of the statute. Under section 236(f)(1) of the National Housing Act, 12 U.S.C. 1715z–1(f)(1), the Secretary establishes a basic rental charge determined on the basis of operating the project with a mortgage bearing interest at one percent, and a "fair market rent" determined on the basis of operating the project with a mortgage bearing interest at the face amount. Under section 236(g) the owner is obligated to return to the Secretary all rental charges collected in excess of basic rent.

Section 219(b) provides that with respect to a plan of action providing incentives for a section 236 project, the section 236 fair market rent for each unit may be increased in accordance with the incentives provided, but the owner shall pay to HUD the excess rent "in an amount not greater than the fair market rental charges as such charges would have been established under section 236(f) * * * absent the requirements of this paragraph." The Department construes this to mean that the amount of excess rent payable to HUD would be capped at the fair market rent as it would have been calculated if no incentives had been provided. However, even this interpretation does not resolve the problems arising from the interplay of the section 236 requirements and the characteristics of a plan of action. One aspect of this problem is that the full benefit of incentives can be realized only if both the basic rent and the fair market rent are increased on the basis of the incentives. Accordingly, the Department proposes to implement this provision by providing that the owner under a plan of action shall calculate the basic rent by taking into account the operating expenses, debt service on the section 236 mortgage at an interest rate of one percent, debt service on any equity take-out or acquisition loan, debt service on any rehabilitation loan, and the owner's allowable distributions under the plan of action. The section 236 market rent would be derived by applying the appropriate factor to the

basic rent. Thus, both the basic rent and market rent would reflect the incentives provided to the owner. The owner would be required to remit to the Secretary all rents collected in excess of the basic rent.

Section 248.157 (Voluntary Sale for Projects Not Exceeding the Federal Cost Limit)

Section 248.157 implements section 220 of the statute, which sets forth the rules governing transfers of eligible low income housing where the transfer preservation rent does not exceed the Federal cost limit. Under this provision the owner offers the project for sale, first to priority purchasers and then to any other qualified purchaser. Paragraph (a) provides in part that the owner is not required to accept any offer that is made for the project. However, if the owner receives and rejects a bona fide offer to purchase the project, the owner may not prepay the mortgage and terminate low income affordability restrictions pursuant to § 248.169. The owners option in such a case would be to file a new plan of action for incentives under § 248.153. If the owner does not receive any bona fide offer to purchase the project, then the owner may prepay the mortgage and terminate low income affordability restrictions, subject only to the protections for tenants provided in § 248.165.

Paragraph (b) details the methods that HUD will use in order to notify potential qualified purchasers of the availability of the project for sale. HUD will compile a list of nonprofit organizations, utilize mailing lists for Resolution Trust Corporation property sales and other clearinghouse networks, contact appropriate State and local government agencies, and advertise in major local newspapers.

Paragraph (c) provides that, for the 12-month period beginning on the date that HUD receives the second notice of intent, the owner may offer to sell the project only to priority purchasers. At the end of the 12-month period, if the owner has not accepted an offer, the owner must offer the project for sale to any qualified purchaser for a 3-month period. Paragraph (d) provides that the sale price shall not exceed the transfer preservation value, even if the purchaser is willing to pay an additional amount with its own funds or with funds from sources other than HUD.

Paragraph (e) establishes a procedure for the prospective purchaser to notify HUD of its interest in acquiring the project. If the purchaser is a priority purchaser that intends to make an offer during the 12-month period, it must so notify the Department, and must submit sufficient evidence for HUD to determine that the purchaser is a priority purchaser. In addition, if the purchaser is a resident council seeking to purchase the project under a homeownership program, the purchaser must submit evidence demonstrating that it qualifies as a resident council. If the purchaser is a community-based nonprofit organization or a State or local government entity, it must likewise submit documentation demonstrating that it qualifies as such under the appropriate definition. In making determinations under this paragraph the Department will, to the extent feasible, use any information previously submitted by the purchaser to HUD in connection with its application for a planning grant under the HOPE 2 program, "HOPE for Homeownership of Multifamily Units." Qualified purchasers that are not priority purchasers may, at their option, notify the Department of their interest in submitting an offer.

Paragraph (f) describes the information that the Secretary will provide to the purchaser. This information will include the Secretary's determination as to the priority status of the purchaser and whether the purchaser qualifies as a resident council, community-based nonprofit organization or State or local government entity.

Paragraph (g) discusses the requirements for submission of an offer to purchase the project. The purchaser must submit a signed contract of sale to the owner. The contract of sale must specify that acceptance is contingent upon approval of the plan of action by HUD. The contract of sale must be accompanied by an earnest money deposit. HUD has determined that the earnest money deposit requirement is appropriate and necessary in order to discourage frivolous and disruptive offers. The deposit must be in an amount equal to one percent of the preservation value. The earnest money deposit would be retained by the seller if the offer is accepted and the purchaser, for reasons not attributable to HUD or the owner, fails to close.

Paragraph (h) establishes a procedure for setting priorities among the priority purchasers. It is the Department's position that this procedure is consistent with the statutory intent of encouraging resident homeownership programs and community-based nonprofit organizations. Under the proposed rule, if more than one offer is made during the 12 month period, then at the expiration of this period, the owner may accept the highest offer among those received, not to exceed the transfer preservation value. If more than one purchaser offers the highest amount, the owner must select the purchaser in the following order of priority: A resident council offering to purchase under a homeownership program, a community-based nonprofit organization, a State or local government, and any other nonprofit organization. These priorities apply only with respect to bona fide offers made during the 12-month period or if the sale is reopened pursuant to paragraph (*l*) because of a transaction which fails to close.

If at any time during the 12-month period a bona fide offer is made by a resident council seeking to purchase the project under a tenant homeownership program, then the owner may accept the offer without waiting until the expiration of the 12-month period. However, the owner may, if it chooses, elect to wait until the expiration of the 12-month period, either in anticipation of a higher offer or because of indecision as to whether to sell the project. If the owner receives no bona fide offers during either the 12-month or the 3-month period, the owner may prepay the mortgage or terminate the mortgage insurance in accordance with §248.169.

Paragraph (i) establishes a procedure for submitting an offer to HUD for a determination that the offer is bona fide. Once the Department notifies the owner that the offer is bona fide, the owner may make a binding acceptance of the offer. The owner and the purchaser would then submit a plan of action to the Secretary in accordance with paragraph (j).

Paragraph (*l*) establishes a procedure to address the possibility of transactions which fail to close. If an offer by a resident council is accepted but the sale transaction falls through within the 12-month priority purchase period or does not close within 90 days after the Secretary's approval of the plan of action, the owner would resume holding the project open for sale under paragraph (c). If, at any time beyond the 12-month priority purchase period (i.e., during the 3-month qualified purchase period or thereafter), the sale falls through or does not close within 90 days after the Secretary's approval of the plan of action, the owner would be required to (a) immediately notify the Secretary; (b) contact any purchaser who had previously submitted offers; and (c) give such parties and any other qualified purchasers 60 days from the date of notification to HUD in which to submit or resubmit offers to purchase the project. At the end of the 60-day period the owner would accept offers in accordance with the priorities set forth in paragraph (h). If an offer submitted during the 60-day period is accepted, but

the sale is not consummated within 90 days of HUD's approval of the plan of action for reasons not attributable in whole or in part to the owner, the owner may terminate the low income affordability restrictions through prepayment or voluntary termination, subject to compliance with the requirements of § 248.165.

Paragraph (m) sets forth the amount of assistance that HUD will provide in connection with plans of action involving transfers. One component of this amount is the amount necessary to acquire the project from the current owner at a price not greater than the transfer preservation value. (Although the statute at section 220(d)(2)(A) uses the term "preservation equity" and not "preservation value" in this context, the Conference Report discussion at page 465 and the statute at sections 220(b)(1) and 220(c) refer to the preservation value as the cap on the sales price. The discrepancy appears to be a matter of terminology. Since the purchaser will be assuming the federally-assisted mortgage, the amount payable to the owner by the purchaser will not exceed the transfer preservation equity; stated differently, the compensation to the owner, including the assumption of the owner's debt on the federally-assisted mortgage, would not exceed the transfer preservation value.) Other components include debt service on the federally-assisted mortgage(s) on the project, debt service on any rehabilitation loan on the project, amounts necessary to meet project operating expenses and establish adequate reserves, and amounts necessary to receive an adequate return on any actual cash investment. As noted above, the Department has determined that a return of 8 percent on actual cash invested by the purchaser would constitute an adequate return.

Paragraph (m)(6) provides that in the case of a priority purchaser, the amount of assistance shall also include adequate reimbursement for transaction expenses relating to the purchase of the project, subject to HUD's approval. In reviewing such expenses HUD will apply the standards used by the Department in approving transaction expenses in connection with FHA multifamily full insurance loan transactions. The allowable expenses would include the organizational costs, if any, incurred in establishing a nonprofit organization which is organized solely for the purpose of purchasing the project. Broker's fees would not be permissible as a transaction expenses under this paragraph.

Paragraph (m)(7) provides that in the case of an approved homeownership program, the amount of the assistance would also include the costs of training for the resident council, homeownership counseling and training, the fee for the nonprofit entity or public agency working with the resident council and costs related to relocation of tenants who elect to move. See § 248.173(m)(4). Expenses incurred before approval of the plan of action will be allowed, even though no assistance will be disbursed until HUD and the resident council enter into a grant agreement pursuant to a homeownership program. The proposed rule caps the assistance that may be provided under this paragraph at $500 per unit, but not more than $200,000 for the project, exclusive of relocation expenses. Moreover, expenses payable to the nonprofit or public entity assisting the resident council will be included in the assistance payable to the purchaser only if HUD approves the nonprofit or public entity. Since reimbursement for the resident council's organizational, training, and planning costs will not be available unless and until the resident council and HUD enter into a grant agreement, resident councils may wish to explore other sources of funding for these costs, including planning grants under the HOPE 2 program.

Paragraph (n) discusses the incentives available to purchasers under this section. In accordance with the Conference Report at page 465, the Department will work closely with priority purchasers to determine the mix of subsidies that best meet their preferences and organizational capacity. Section 220(d)(3) of the statute provides in part that "any residual receipts for the housing transferred to the selling owner shall be deducted from the sale price of the housing * * *" However, the sale price is capped at the preservation value which, in accordance with standard appraisal practices, does not take into consideration the amount of project escrows such as residual receipts. Thus, since the full value of the owner's asset includes both the preservation value and amount of residual receipts, requiring the owner to deduct the amount of residual receipts retained by the owner upon sale from the purchase price would appear to deprive the owner of a portion of the project's value. Paragraph (n) repeats the statutory language regarding this deduction; however, the Department specifically invites comments as to the proper construction of this statutory provision.

Paragraph (o) provides that where the qualified purchaser is a priority purchaser the Secretary may provide, in addition to incentives, assistance in the form of a grant in an amount that does not exceed the present value of the total of the projected section 8 existing fair market rents for section 8 existing housing for the next ten years or such longer period if additional assistance is necessary to cover the costs referred to in paragraph (m). The Department reserves the right to determine what combination of incentives and grant assistance is the least costly alternative to the Federal government. The 10-year grant amount provided under this paragraph would be calculated as follows: The section 8 existing fair market rent for each bedroom size would be multiplied by the number of units of each bedroom size, and then added together. This total amount would be adjusted by the latest applicable Annual Adjustment Factor used for the local area. The present value would be discounted using the interest rate on 10-year Treasury notes.

Paragraph (p) of the proposed rule provides that the Secretary shall seek reimbursement for assistance provided to a priority purchaser that, during the term of a plan of action, becomes affiliated with or sells the property to a non-priority purchaser. The Secretary would be entitled to reimbursement for the difference between the assistance provided to the priority purchaser and the assistance that would have been provided if the purchaser had been a non-priority purchaser. The Department is imposing this requirement in order to prevent transactions in which "straw" priority purchasers seek to purchase the project under an arrangement in which they will later transfer it to a for-profit entity.

Section 248.161 (Mandatory Sale for Housing Exceeding Federal Cost Limit)

The procedures for sale of a project whose transfer preservation rent exceeds the Federal cost limit generally parallel the procedures for voluntary sales under § 248.157, and § 248.161 therefore includes appropriate cross-references. The major distinction between the sale procedures under the two sections is that an owner proceeding under §248.157 is not required to accept any offer, regardless of the purchase price being offered, whereas an owner proceeding under § 248.161 is required to accept a bona fide offer to purchase the project for a purchase price that equals the transfer preservation value of the project. (If the owner receives more than one such offer, the selection of the purchaser

would be based upon the priorities as set forth in section § 248.157(h).)

In addition, a bona fide offer under § 248.157 could be at a purchase price that is up to the transfer preservation value, whereas the purchase price under § 248.161 would in all cases equal the transfer preservation value. Although the statute at sections 221(b)(1) and 221(c) refers to a purchase price "not less than" the transfer preservation value, the Conference Report at page 465 indicates that the purchase price would be equal to the transfer preservation value. The Department believes that the Conference Report is more consistent with the overall scheme of the statute, which is to compensate the owner for the value of its asset, and with the mandate in section 222(a)(1) to provide incentives that are the "least costly alternative" that is consistent with the full achievement of the statute's purposes. If the owner receives no bona fide offers that are at a purchase price equal to the transfer preservation value, the owner would be free to prepay the mortgage and terminate low income affordability restrictions under § 248.169.

The incentives and assistance available in connection with a sale under § 248.161 are generally similar to those under § 248.157, except that instead of providing, for priority purchasers only, a grant authorized by section 234(a) of the statute, the Secretary may provide grant assistance from funds made available under section 234(b) of the statute, and such funds would be available to both priority and for-profit purchasers. Section 221(b)(2) of the statute states that such assistance shall be in an amount not exceeding the difference between the preservation value of the housing and the level of assistance under section 221(d)(1), which authorizes the provision of section 8 assistance and other incentives. However, in the Department's view the total amount of assistance that must be provided under § 248.161 must be sufficient to fund all of the components listed in § 248.157(m). Section 248.161(d) has been drafted accordingly.

Section 248.165 (Assistance for Displaced Tenants)

This section implements section 223 of the 1990 Act, and provides detailed procedures for the protection of tenants who will be displaced through prepayment of the mortgage. The requirements of this section would be applicable in any case where the owner is permitted to prepay the mortgage and terminate low income affordability restrictions under § 248.169. As previously discussed, these requirements would not be applicable to prepayments under § 248.141.

Paragraph (d) requires the owner to pay 50 percent of the relocation expenses of each tenant, regardless of the income level of the tenant, except that the owner shall be required to increase the owner's contribution if so mandated by State or local law of general applicability. HUD will inform the tenants in the project of their rights to reimbursement for relocation expenses and other rights under this section.

Paragraph (e) provides that all tenants, regardless of income, shall be entitled to remain in the project for three years, at rent levels, except for increases due to increased operating costs, existing at the time of prepayment. The proposed rule states that the three-year period shall commence on the date of prepayment. Paragraph (f) allows the owner to fulfill this requirement by providing assistance necessary for the tenant to rent a decent, safe and sanitary unit in another project at a rental cost (i.e., cost to the tenant) that is no more than the amount that the tenant would be required to pay under paragraph (e). This option would be available only if the tenant freely waives his or her right to remain in occupancy in the owner's project.

Paragraph (g) provides special protections for tenants (a) in projects located in low-vacancy areas, and (b) for special needs tenants. See discussion *supra* regarding the definitions of "low vacancy area" and "special needs tenants."

Paragraph (i) prohibits the owner from discriminating against any current tenant or future tenant or applicant for tenancy because that person receives assistance under section 8 of the United States Housing Act of 1937. The Conference Report at page 467 indicates that HUD would be authorized to set section 8 existing fair market rent levels at the "exception rent" so that tenants could use section 8 certificates or vouchers at the project even if the project's rents exceed the section 8 existing fair market rent. The Department is considering whether to make a technical amendment to the part 882 and part 887 regulations authorizing such exception rents, on a case-by-case basis, if necessary to protect current tenants. With respect to section 8 certificate holders for whom HUD does not approve exception rents, the discrimination prohibition in this paragraph would be applicable only to units that rent for an amount not in excess of the section 8 existing fair market rent.

Section 248.169 (Permissible Prepayment, Voluntary Termination or Modification of Commitments)

This section implements section 224 of the 1990 Act and sets forth the circumstances under which the owner may prepay the mortgage or otherwise modify or terminate the low income affordability restrictions. As noted above, this provision is inapplicable to prepayments approved under § 248.141. In general, prepayment will be permitted when HUD does not provide assistance approved in the plan of action within the specified time periods (or cannot approve the plan of action because of lack of adequate appropriations), or if the owner has offered the project for sale under either §248.157 or § 248.161 and has failed to receive any bona fide offers within the specified time periods. In either case the owner would not be entitled to prepay if HUD's failure to provide assistance or if the absence of a bona fide offer was attributable to the owner's actions or inaction. For example, the owner's refusal to execute a new regulatory agreement in connection with the provision of incentives would be grounds for HUD to refuse to permit the owner to prepay the mortgage.

The possibility that adequate funds may not exist to support all of the anticipated plans of action filed under the 1990 Act, with the result that many projects may be lost from the affordable housing inventory, is an issue of concern to the Department. The 1990 Act does not explicitly establish any basis for prioritizing among projects for funding assistance. However, if appropriations are insufficient to fund plans of action for all eligible low income housing projects for which plans of action are filed, the Department would by necessity have to fund some projects and not others. The Department specifically invites comments as to how it should allocate funds if that situation arises.

The statute does not define what is meant by "assistance" for purposes of section 224(a). Section 248.169(a)(1) defines such assistance as including section 8 assistance, a capital improvement loan under 24 CFR part 219, assistance for a homeownership program under § 248.173, a grant provided under § 248.157(o), or a grant under § 248.161(d), but not insurance of a rehabilitation, equity or acquisition loan under part 241.

Section 224(b) of the 1990 Act, which discusses the consequences if HUD is

unable to continue providing section 8 assistance for the full term of the plan of action, generally tracks the language of section 225(c) of the 1987 Act. The 1987 Act specified three successive actions that HUD would take in the event that section 8 funds are no longer available: (1) Modifying the low income affordability restrictions that are dependent on the assistance; (2) if (1) is infeasible, releasing the owner from such restrictions; and (3) if (1) and (2) would result in a default under the insured loan, allowing the termination of all low income affordability restrictions. The 1990 Act specifies the following actions: (1) Modifying the low income affordability restrictions that are dependent on the assistance; and (2) permitting the owner to prepay the mortgage and terminate low income affordability restrictions, if the owner agrees to comply with the provisions of section 223 regarding assistance for displaced tenants. Unlike the 1987 Act, the 1990 Act does not state the order in which these alternatives are to be considered. Nonetheless, the proposed rule states that prepayment and termination of low income affordability restrictions will be permitted only if modification of the low income affordability restrictions is infeasible.

Section 248.173 (Resident Homeownership Program).

This section implements section 226 of the statute and sets forth in considerable detail the requirements for a resident homeownership program. The homeownership program would be implemented in the context of a transfer of the project to the resident council under § 248.157 or § 248.161, and the resident council would be eligible to receive grant funds necessary to pay the purchase price, transaction expenses, and reimbursement for costs of training for the resident council, homeownership counseling and training, fees for the nonprofit entity or public agency working with the resident council, and relocation expenses.

Outside of the assistance provided to the resident council under the plan of action, the Department does not intent to provide any subsequent or ongoing assistance to the resident council, with the following exceptions: First, HUD intends to continue section 8 assistance for prospective homeowners who reside in the project on the date that it is transferred; such assistance would continue until the Department has determined that the project has achieved normalized operating expense levels, but in no event later than the completion of the transfer of ownership of units in the project (other than units occupied by nonpurchasing tenants) to the tenants. Project-based assistance to nonpurchasing tenants would be terminated at the time of the transfer of the project to the resident council; however, such tenants would be entitled to receive section 8 certificates or vouchers under § 248.173(m)(2) of the proposed rule. Second, amounts needed for certain ongoing operating expenses, including reserve for replacements escrows and reserves for contingencies against unexpected increases in expenses or shortfalls in homeowners' payments, may be capitalized and included within the assistance provided as part of the homeownership program.

Paragraph (a) contains the statutory requirement that the resident council work with a nonprofit entity or public body approved by the Secretary. The resident council should submit the name and qualifications of such entity or agency as early in the process as possible, so that the resident council will not incur expenses that HUD later determines are not eligible for reimbursement. The entity must have a demonstrated capacity for assisting the tenants to consider their options and develop a workable homeownership program.

Paragraph (c) establishes requirements for demonstrating the sufficient level of tenant interest in the homeownership program at the time that the resident council makes an offer to purchase the project. The resident council must submit a list of at least 75 percent of all of the families, representing at least 50 percent of all of the units in the project, who have expressed an interest in participating in the homeownership program. Although the statute does not impose any such requirement, the Department views such documentation of tenant interest to be an integral part of demonstrating that the offer is a bona fide offer.

Paragraph (d) describes the contents of the homeownership program which must be submitted in connection with the plan of action. These provisions are derived from section 226(b)(1) of the statute and are also drawn from the HOPE Program Guidelines.

Paragraph (f) describes the forms of homeownership which the Secretary could approve under a homeownership program. Although condominium and cooperative arrangements are the most likely forms of ownership, fee simple ownership could also be used in the case of townhouse or side-by-side garden apartment projects, provided a homeowner association or other similar entity is created to exercise the legal control over the project necessary to comply with the requirements of the rule.

Paragraph (g) sets forth requirements concerning occupancy of the project. The Department has determined that it is appropriate to require the same proportionality of very low, low and moderate income initial owners in the project as the proportionality required under § 248.145 for tenants under a non-resident homeownership plan of action. The resident council may, if it elects, sell vacant units and units occupied by tenants who choose not to purchase their units, to very low income and low income purchasers, regardless of the proportions of very low income, low income and moderate income tenants in the project.

The resident council must demonstrate in its homeownership program that the aggregate incomes of initial and subsequent owners and other sources of funds for the project are sufficient to permit occupancy charges to cover the full operating costs of the housing and any debt service. The resident council may provide that occupancy charges will vary on the basis of the homeowner's income, provided that the total charges for housing costs (i.e., principal, interest, taxes, insurance, occupancy charges and utilities) are projected to be no more than 35% of the homeowner's income. The resident council must establish adequate underwriting standards for homeownership.

Section 226(b)(3)(D) of the statute requires that each initial owner occupy the unit that it acquires. The proposed rule provides in addition that each initial owner agree not to lease or otherwise make the property available for occupancy by other residents during the 15-year period from the date of acquisition, unless the resident council determines that the initial owner is required to move outside the market area due to a change in employment or an emergency situation. This requirement is based on a parallel provision in the HOPE Program Guidelines.

Paragraphs (h) through (*l*) establish detailed requirements concerning restrictions on resale of the units and application of sales proceeds. The provisions of section 226(b)(5) of the 1990 Act are largely consistent with the analogous provisions of title IV of the 1990 Act and thus the provisions of the proposed rule largely track the analogous provisions of the HOPE Program Guidelines. As in the case of the HOPE programs, HUD will consult with the Internal Revenue Service on the tax consequences to families

participating in the homeownership program, and will inform the resident council as to the advice received.

If the initial homeowner sells the unit during the first six years after acquisition of the unit, that homeowner may retain only the amount computed under paragraph (k), i.e., the homeowner's equity contribution, the value of any improvements installed at the homeowner's expense, and the appreciated value, determined by applying the Consumer Price Index (urban consumers) against the equity contribution and the value of improvements.

Paragraph (i)(3) requires the execution of a promissory note payable to the Secretary in the amount of the difference between the market value of the unit and the purchase price paid by the initial owner. If the initial homeowner sells the unit between the seventh year and the expiration of 20 years after acquisition of the unit, the homeowner may retain any net sale proceeds not payable to HUD under the promissory note. For example, if the homeowner sells at the end of the 13th year of homeownership (at the half-way point between the end of the 6th year and the end of the 20th year of homeownership), 84/168 (or one-half) of the note would be forgiven, and only half of the principal amount of the note would be payable from sales proceeds. The homeowner could retain all remaining proceeds, including proceeds due to normal market value increases in the value of the unit. If the initial homeowner retains ownership for 20 or more years, the entire amount of the note would be forgiven.

Paragraph (j) provides that if a subsequent owner purchases the property during the 20-year period for less than the then-current fair market value, the subsequent purchaser shall also execute a promissory note for the balance of the 20-year period. For example, if the subsequent homeowner acquires the unit at the end of the 4th year, 192 months would remain in the 20-year period. If the subsequent homeowner sells the unit at the end of the 10th year, having owned the unit for 72 months, 72/192 (37.5 percent) of the note would be forgiven, and 62.5 percent of the principal amount of the note would be payable from sales proceeds. The subsequent homeowner could retain all remaining sales proceeds. If the subsequent homeowner retains ownership to the end of the initial 20-year period, the entire amount of the note would be forgiven.

Paragraph (m) establishes requirements for protection of nonpurchasing families. As provided in section 226(b)(6)(B) of the statute, HUD would provide section 8 certificates or vouchers for section 8-eligible tenants. The requirements for giving preference to certain categories of eligible families under 24 CFR 882.219 and 887.157 would not apply to the provision of assistance to such families. In addition, the proposed rule provides that tenants whose incomes exceed section 8 eligibility standards would be required to pay no more than the section 8 existing fair market rent published for effect or 30 percent of adjusted income, whichever is less, and rent increases for such tenants would be phased in in accordance with §248.145(a)(6). These rent limitations would continue in effect until the tenant moves out. Thus, nonpurchasing tenants would receive the same level of protection against rent increases that is provided to current tenants under a nonhomeownership plan of action involving incentives.

Paragraph (o) establishes requirements for timely transfer of the project from the owner to the resident council and from the resident council to the initial purchasers. The rule states in part that the resident council shall transfer ownerhship interests in the units within four years from the date of acquisition by the resident council. This requirement is derived from a parallel requirement in the HOPE Program Guidelines. If the resident council fails to tranfer ownership interests within the prescribed period, HUD may invoke contractual remedies as set forth in the grant agreement between HUD and the resident council.

Paragraph (p) requires that, prior to transferring ownership interests to the initial purchasers, the resident council must maintain the project in accordance with the housing standards set forth in §248.147. The Department will conduct annual inspections to ensure that this requirement is complied with. Paragraphs (q) and (r) set forth audit and reporting requirements for the resident council.

Section 226(b)(10) of the statute states that any entity that assumes a mortgage in connection with a resident homeownership program must comply with any low income affordability restrictions for the remaining useful life of the project, provided that this requirement shall only apply to an entity, such as a cooperative association, that, as determined by the Secretary, intends to own the housing on a permanent basis. The HOPE Program Guidelines, implementing a parallel statutory provision, provide that grant recipients may not assume a mortgage where low income use restrictions would continue to apply. Likewise, paragraph (s) of the proposed rule states that a section 221(d)(3) market rate mortgage or purchase money mortgage, but not a section 221(d)(3) BMIR or section 236 mortgage, may be assumed by the resident council in connection with its purchase of the project.

Section 248.177 (Delegated Responsibility to State Agencies)

The proposed rule tracks the language of section 227 of the statute. The Department intends to accept applications from State agencies for delegation of responsibilities under the statute once it has gained some experience with implementation of the statute. More detailed requirements will be issued in the form of administrative instructions.

Section 248.179 (Consultation with Other Interested Parties)

The Department will implement this provision by consulting with State and local government agencies on an ongoing basis.

Section 248.181 (Notice to Tenants)

Section 248.181 provides for notification to the tenants of an affected project of the communications between the Commissioner, the owner, and purchaser, if any, concerning the status of the project as it proceeds under the provisions of this subpart. The language in this section is identical to that of the statute except for the more stringent notification requirements imposed for purposes of identifying tenant representatives when a notice of intent is submitted pursuant to § 248.105. As discussed in the description of § 248.105, the proposed rule provides a more stringent tenant notification procedure for the initial notice of intent than that specified in section 230 of the statute; the Department hopes that through this notification procedure the tenant representative, if any, will be contacted at the earliest possible stage in the process, and tenants will be given the maximum opportunity to participate in the formulation of the plan of action. In addition, the proposed rule clarifies that, where the full text of material (e.g., the proposed plan of action, and the plan of action as finally approved) is to be kept at a convenient location and made available for examination by the tenants, the tenants must have access to such material for inspection and copying during reasonable hours.

Section 248.218 of the existing rule provides that, when the owner and the Secretary have reached preliminary agreement on the terms of a plan of action, the owner shall send to each

tenant a HUD-prepared summary of the plan of action, and tenants shall have 60 days in which to submit comments to HUD before final approval of the plan of action. No such requirement is included in subpart B of the proposed rule, because under subpart B tenants will receive notification of the owner's intentions and information about the plan of action on an ongoing basis.

Subpart C

The proposed rule retains the provisions of §§ 248.201 through 248.261 as they exist in the existing rule, with the following exceptions:

Section 248.221(c)

This provision states that HUD will not approve a plan of action involving termination of low income affordability restrictions if there are open findings of noncompliance with civil rights authorities or open audit findings with respect to violations of the regulatory agreement. A corresponding requirement is applicable to plans of action under subpart B of this part. See § 248.141(a)(3).

Section 248.221(d)

Pursuant to section 203(d) of the HUD Reform Act, this provision is being revised to provide that the plan of action shall specify the actions that the Secretary and the owner shall take to ensure that any tenants displaced as a result of the termination of low income affordability restrictions are relocated to affordable housing.

Section 248.233(f)

This provision states that no incentives will be provided if there are open findings of noncompliance with civil rights statutes and authorities or open audit findings with respect to violations of the regulatory agreement. A corresponding requirement is applicable to plans of action under subpart B. See § 248.145(a)(12).

Section 248.234(c)

This provision also implements section 203(d) of the HUD Reform Act, and provides that the plan of action must specify what actions HUD and the owner would take to ensure that tenants displaced as a result of any modification of low income affordability restrictions stemming from the unavailability of section 8 assistance are relocated to affordable housing.

Section 248.235

This provision gives owners who have agreed to extend low income affordability restrictions under the 1987 Act a right to convert to a subsequently-enacted system of incentives and restrictions. As noted above, it is deleted in the proposed rule and is superseded by § 248.5.

Part 241

Subpart A—Eligibility Requirements

Section 241.166

This provision implements section 204(b) of the HUD Reform Act, which provides that, when underwriting a rehabilitation loan under part 241 in connection with "eligible multifamily housing," the Secretary may assume that any rental assistance provided for purposes of servicing the additional debt will be extended for the term of the rehabilitation loan, and states further that the Secretary shall exercise prudent underwriting in insuring rehabilitation loans under part 241. This provision is parallel to the first sentence of section 241(f)(7) of the National Housing Act, as amended by section 602(a) of the 1990 Act, which pertains to equity loans and acquisition loans. However, it is important to note that while the definition of "eligible multifamily housing" generally comprises the same categories of projects as those described in the statutory definition of "eligible low income housing," section 204(b)'s applicability is not tied to the eligibility of the project for prepayment or the status of the project under part 248.

Section 204(b) of the HUD Reform Act also provides that a mortgagee approved by the Secretary may not withhold consent to a rehabilitation loan insured in connection with eligible multifamily housing on which the mortgagee holds a mortgage. This provision parallels section 241(f)(9) of the National Housing Act, as amended by section 602(a) of the 1990 Act, which pertains to equity loans and acquisition loans.

Subpart B—Contract Rights and Obligations

Section 241.251.

The proposed rule includes language incorporating by reference the "Contract Rights and Obligations" provisions of subpart D, "Contract Rights and Obligations—Multifamily Projects Without a HUD-Insured or HUD-Held Mortgage," for noninsured projects that receive a rehabilitation loan under subpart A in connection with a HUD-approved plan of action. Section 241(d) of the National Housing Act, as enacted by section 313 of the Housing and Community Development Act of 1974, Public Law 93–383, provides in part that the Secretary may insure a loan for "improvements or additions" to a multifamily project not covered by a HUD-insured mortgage, if such a loan would assist in preserving, expanding or improving housing opportunities or in providing protection against fire or other hazards. Likewise, section 241(e)(1), as enacted by section 247 of the National Energy Conservation Policy Act of 1978, Public Law 95–619, authorizes the Secretary to insure a loan for energy conservation improvements, solar energy systems or individual utility metering for a project, without regard to whether the project is covered by a HUD-insured mortgage. In 1980 HUD amended part 241 to implement the latter provision only. See 45 FR 30352 (May 7, 1980). Under the proposed rule § 241.251 would be amended to authorize HUD to insure a rehabilitation loan under subpart A of part 241 for a project with a noninsured section 236 mortgage, in connection with a HUD-approved plan of action. A parallel amendment to § 241.1200 has also been included in the proposed rule, in order to authorize HUD to insure an equity or acquisition loan under subpart E for a project with a non-insured section 236 mortgage.

Subparts E and F—Insurance for Equity Loans and Acquisition Loans

Section 602 of the 1990 Act substantially revised the provisions of section 241 of the National Housing Act, 12 U.S.C. 1715z–6(f), by (1) expanding the scope of section 241 to include acquisition loans in connection with plans of action under the 1990 Act; (2) restricting the amount of an equity loan insured under section 241 to the lesser of 70 percent of the preservation equity in the project or the amount that the Secretary determines can be supported by the project on the basis of an 8 percent return on the preservation equity (assuming normal debt service coverage); (3) requiring the lender to escrow 10 percent of the equity loan, to be released after 5 years if the owner is in compliance with the housing standards mandated by section 222(d) of the statute; and (4) providing that an acquisition loan shall be limited to 95 percent of the preservation equity of the project, except that if the purchaser is a priority purchaser, the loan may include any expenses associated with the acquisition, loan closing and implementation of the plan of action.

Under the proposed rule owners whose plans of action are processed under the 1987 Act will be subject to section 241(f) as it existed under the 1987 Act, while owners whose plans of action are processed under the 1990 Act will be subject to section 241(f) as amended by the 1990 Act. Although

section 602(a) amends section 241(f) and, under section 605, is effective upon the enactment of the 1990 Act (i.e., on November 28, 1990), it is the Department's view that the provisions of section 241(f) as they existed prior to their amendment remain in effect for owners who are or will be seeking approval of plans of action under the 1987 Act and subpart C of part 248. The Department takes this position because section 241(f) was originally enacted by section 231 of the 1987 Act, which is part of subtitle B of title II of the 1987 Act and is thus part of the "Emergency Low Income Housing Preservation Act of 1987," and, as explained in the preceding discussion of § 248.5, under sections 604 (a) and (b) of the 1990 Act owners retain their right to proceed under the 1987 Act and subpart C. For this reason, the proposed rule has revised part 241, subparts E and F to include provisions that implement both section 241(f) as it existed under the 1987 Act and as it has been revised by the 1990 Act.

Section 241.1000 (Purpose and Scope)

The language of this provision has been revised to state that the purpose of subpart E is to provide insurance for equity take-out loans under the 1987 Act and equity take-out loans and acquisition loans under the 1990 Act.

Section 241.1005 (Definitions)

The list of definitions has been expanded to include appropriate cross-references to subpart B of part 248 regarding the definitions of acqusition loan, extension and transfer preservation equity, priority purchaser and qualified purchaser.

Section 241.1065 (Maximum Loan Amount—Loans Insured in Connection with Plans of Action Under Part 248, Subpart C)

This provision retains the language of the existing § 241.1065, but limits its applicability to equity take-out loans insured in connection with plans of action under the 1987 Act.

Section 241.1067 (Maximum Loan Amount—Loans Insured in Connection with Plans of Action Under Part 248, Subpart B)

This provision implements section 241(f)(2)(B)(i) and 241(f)(3)(B), as amended by section 602 of the 1990 Act, and establishes the maximum loan amount for equity take-out loans and acquisition loans, respectively.

Section 241.1069 (Escrow Requirements)

This provision implements section 241(f)(2)(B)(ii), as amended by section 602, and requires that, in connection with equity loans made for plans of action under subpart B of part 248, the lender shall deposit on behalf of the owner 10 percent of the loan amount in the escrow account, controlled by the Secretary or a State housing finance agency approved by the Secretary, to be made available to the owner upon the expiration of 5 years from the date of origination of the loan, subject to the owner's compliance with the housing standards in § 248.147. In addition, with respect to both equity loans provided in connection with plans of action under subparts B or C of part 248, this provision requires the phasing in of advances to reflect rent levels.

Section 241.1120 (Mortgagee's Consent)

The proposed rule revises the provision on mortgagee's consent to provide that the holder of an insured mortgage may not charge a fee for consenting to the equity or acquisition loan. In the Department's view such a fee is tantamount to withholding consent, and allowing such a fee would be contrary to the intent of the statutory prohibition.

Section 241.1200 (Cross-references)

See discussion of § 241.251, *supra*.

Findings and Other Matters

This rule constitutes a major rule, as determined by the Office of Information and Regulatory Affairs, Office of Management and Budget, under the authority of Executive Order 12291 on Federal Regulations issued on February 17, 1981. A copy of the Regulatory Impact analysis has been transmitted to the Office of Management and Budget, and is available for public inspection during regular business hours in the Office of General Counsel, Rules Docket Clerk, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

This rule was listed as item 1224 in the Department's Semiannual Agenda of Regulations published on April 22, 1991 (56 FR 17360, 17371), under Executive Order 12291 and the Regulatory Flexibility Act.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of General Counsel, Rules Docket Clerk, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Under section 605 of the Regulatory Flexibility Act (5 U.S.C. 601), HUD certifies that this rule does not have a significant economic impact on a substantial number of small entities, because it carries out statutorily-mandated limitations on prepayment of the affected mortgages. Any economic impact is a direct consequence of the statute and is not separately imposed by this rule.

The information collection requirements contained in the rule have been submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, HUD Desk Officer, room 3001, New Executive Office Building, Washington, DC 20503, for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3502). No person may be subject to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

TABULATION OF ANNUAL REPORTING BURDEN

Description of information collection and applicable program reference	Number of respondents 17.1 ×	Number of responses per respo 17.2 =	Total annual responses 17.3×	Hours per response 17.4	Total hours = 17.5
A. First Notice of Intent 1990 Statute: Section 248.105	506.00	1.00	506.00	2.00	1,012.00
B. Notice of Intent under 1987 Statute: 248.5 (*)	275.00	1.00	275.00	2.00	550.00
C. Appraisal: 248.111					
D. Second Notice of Intent: 248.133	282.00	1.00	282.00	3.75	1,057.50
E. Plan of Action:					
1. Termination of Affordability: 248.141	4.00	1.00	4.00	33.00	132.00

TABULATION OF ANNUAL REPORTING BURDEN—Continued

Description of information collection and applicable program reference	Number of respondents 17.1 ×	Number of responses per respo 17.2=	Total annual responses 17.3 ×	Hours per response 17.4	Total hours=17.5
2. Extension of Affordability/Transfer of Project: 248.145	502.00	1.00	502.00	15.00	7,530.00
F. Expression of Interest from Potential Purchasers: 248.157(c)	282.00	1.00	282.00	1.00	282.00
Additional Information from Resident Councils: 248.173(b)	39.00	1.00	39.00	0.25	9.75
G. Owner provides potential purchaser informaton on housing: 248.157(e)(4)	282.00	1.00	282.00	5.00	1,410.00
H. Bona Fide Offers	282.00	1.00	282.00	1.00	282.00
Additional information from resident councils	39.00	1.00	39.00	4.00	156.00
I. Owner provides informaton on displaced tenants: 248.165(b)	4.00	1.00	4.00	3.00	12.00
J. Notices of vacancies from public housing agencies: 248.169(c)	4.00	1.00	4.00	1.00	4.00
K. Owner notifies HUD of expiring Section 8 contracts: 248.169(g)	463.00	1.00	463.00	0.75	347.25
L. Resident homeownership plan: 248.157(f) and 248.169(d)	39.00	1.00	39.00	25.00	975.00
M. State preservation plan: 248.179(b)	6.00	1.00	6.00	11.00	66.00
Totals	3,009.00				13,825.50
Rounded					13,826

(*) This notice will only be collected during the 60 days following the publication of this rule.

The Department specifically requests comments on how the paperwork burden on the public resulting from the proposed rule may be reduced.

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order.

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that some of the policies in this rule will have a significant impact on the formation, maintenance, and general well-being of the family. Achievement of homeownership by low income families under the regulation can be expected to support family values, by helping families to achieve security and independence, by enabling them to live in decent, safe, and sanitary housing, and by giving them the skills and means to live indpendently in mainstream American society. Since the impact on the family is beneficial, no further review is necessary.

The General Counsel, as the Designated Official under Executive Order 12630, Government Actions and Interference with Constitutionally Protected Property Rights, has determined that this proposed rule does not have "takings implications,' as defined in HUD's "Suplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings." The proposed rules does not deny the owner an economically viable use for the project. Instead, the cwner will, at a minimum, maintain ownership of the project with the below market rate mortgage or rental subsidies in place and with greatly enhanced access to the full equity in the project as residential rental housing; alternatively, the owner may transfer the project under a plan of action in which the Secretary will provide incentives that will enable the owner to realize the full value of the project at its highest and best use, or may be entitled to prepay the mortgage.

The Catalog of Federal Domestic Assistance program number for this rule is 14.137 (Mortgage Insurance—Rental and Cooperative Housing for Low and Moderate Income Families).

List of Subjects

24 CFR Part 50

Environmental assessments; Environmental impact statements; Environmental policies and review procedures.

24 CFR Part 219

Loan programs—housing and community development, Low and moderate income housing.

24 CFR Part 221

Condominiums; Low and moderate income housing; Mortgage insurance; Displaced families; Single family housing pojects; Cooperatives.

24 CFR Part 241

Energy conservation; Mortgage insurance; Solar energy; Projects.

24 CFR Part 248

Low and moderate income housing; Mortgage insurance.

Accordingly, the Department proposes to amend title 24 of the Code of Federal Regulations as follows:

PART 50—PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

1. The authority citation for part 50 would continue to read as follows:

Authority: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 50.20, paragraph (n) would be revised to read as follows:

§ 50.20 Categorical exclusions.

* * * * *

(n) Approval of mortgage prepayments or plans of action (including incentives) under the Emergency Low Income Housing Preservation Act of 1987 or the Low Income Housing Preservation and Resident Homeownership Act of 1990, and approval of mortgage prepayments under other statutes or authorities, when the proposal does not involve demolition of any buildings, or parts of any building, containing the primary use served by the project.

* * * * *

PART 219—FLEXIBILE SUBSIDY PROGRAM FOR TROUBLED PROJECTS

3. The authority for part 219 would continue to read as follows:

Authority: Sec. 201, Housing and Community Development Amendments of 1978, 12 U.S.C. 1715z-la; sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

4. In § 219.325, the introductory text of paragraph (b) and paragraph (b)(3) are revised and a new paragraph (b)(5) is added to read as follows:

§ 219.325 Effect on rental rates.

* * * * *

(b) If rent increases that would result from the debt service and other expenses of a capital improvement loan under this subpart for a project would cause the rents of lower income residents of the project to be higher than the amount that would be allowed for eligible families under 24 CFR 813.107, or where appropriate to implement a plan of action under part 248 of this chapter, the Secretary may consider taking any or all of the following actions:

* * * * *

(3) Notwithstanding § 219.320(b), reduce the rate of interest on the capital improvement loan to a rate not lower than one percent.

* * * * *

(5) Permit repayment of the debt service to be deferred as long as the low and moderate income character of the project is maintained in accordance with § 219.110(b).

* * * * *

PART 221—LOW AND MODERATE INCOME MORTGAGE INSURANCE

5. The authority for part 221 would continue to read as follows:

Authority: Sec. 211, 221, National Housing Act (12 U.S.C. 1715(b), 1715*l*); section 221.544(a)(3) is also issued under section 201(a) of the National Housing Act, 12 U.S.C. 1707(a).

6. In § 221.524, paragraph (e) would be revised to read as follows:

§ 221.524 Prepayment privileges.

* * * * *

(e) *Prepayment of mortgages subject to part 248.* Where the mortgage described in paragraph (a)(1) of this section is, or prior to assignment to the Commissioner was, insured under section 221(d)(3) of the Act and the mortgagor receives project-based assistance under parts 880, 881 or 886 of this title, or where the mortgage is, or prior to assignment to the Commissioner was, insured under section 221(d)(5) of the Act, the mortgage may be prepaid in full only in accordance with a plan of action approved by the Commissioner under part 248 of this title.

PART 241—SUPPLEMENTARY FINANCING FOR INSURED PROJECT MORTGAGES

7. The authority for part 241 would continue to read as follows:

Authority: Sec. 211, 241, National Housing Act (12 U.S.C. 1715b, 1715z-6); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d).

8. 24 CFR part 241, subpart A, would be amended by adding a new § 241.166 to read as follows:

§ 241.166 Special underwriting standards for eligible multifamily housing.

(a) For purposes of this section, the term "eligible multifamily housing" means any housing financed by a loan or mortgage that is—

(1) Insured or held by the Commissioner under section 221(d)(3) of the National Housing Act and assisted under section 101 of the Housing and Urban Development Act of 1965 or section 8 of the United States Housing Act of 1937;

(2) Insured or held by the Secretary and bears interest at a rate determined under the proviso of section 221(d)(5) of the National Housing Act; or

(3) Insured, assisted or held by the Secretary under section 236 of the National Housing Act.

(b) When underwriting a loan under this subpart in connection with eligible multifamily housing, the Commissioner may assume that any rental assistance provided for purposes of servicing the additional debt will be extended for the term of the rehabilitation loan. The Commissioner shall exercise prudent underwriting practices in insuring rehabilitation loans under this subpart.

(c) The holder of an insured mortgage which is recorded prior to the rehabilitation loan covering eligible multifamily housing may not withhold its consent to the rehabilitation loan or the security instrument executed in connection with the rehabilitation loan, and may not charge a fee as a condition to its consent to such loan or security instrument.

9. Section 241.251 would be amended by adding a paragraph heading to paragraph (a) and adding paragraph (c) to read as follows:

§ 241.251 Cross-reference.

(a) *Projects with a HUD-insured or HUD-held mortgage.*

* * * * *

(c) *Projects without a HUD-insured or HUD-held mortgage.* The provisions of subpart D of this part shall be applicable to a project without a HUD-insured or HUD-held mortgage that is receiving a loan insured under subpart A of this part in connection with a plan of action approved by the Commissioner under part 248 of this chapter.

10. 24 CFR, subparts E and F, would be revised to read as follows:

Subpart E—Insurance for Equity Loans and Acquisition Loans—Eligibility Requirements

Sec.

Subpart F—Insurance for Equity Loans—Contract Rights and Obligations

Sec.

Subpart E—Insurance for Equity Loans and Acquisition Loans—Eligibility Requirements

§ 241.1000 Purpose and scope.

(a) Section 231 of the Housing and Community Development Act of 1987 (the "1987 Act") amended the National Housing Act by adding a new subsection (f) to section 241. This section authorizes the Secretary to provide insurance for an equity loan as a vehicle for the owner of an eligible multifamily project to capture a portion of the project's equity, in connection with a plan of action approved by the Commissioner under the 1987 Act.

(b) Section 602 of the Cranston-Gonzalez National Affordable Housing Act of 1990 (the "1990 Act") amended section 241 by expanding its scope to include both equity loans for owners, and acquisition loans for purchasers, under a plan of action approved under the provisions of the 1990 Act, and by making other changes. The provisions of section 241(f) as amended by the 1990 Act are applicable to owners with plans of action being processed under part 248, subpart B, which implements the 1990 Act.

(c) The provisions of section 241(f) of the Act as they were in effect prior to the 1990 Act remain in effect for owners with plans of action being processed under part 248, subpart C, which implements the 1987 Act.

(d) The insurance of an equity loan or acquisition loan under this subpart may be provided only as a specific element of a plan of action approved by the Commissioner under part 248 of this chapter and is not available under any other department program.

(e) Unless otherwise indicated, the provisions of this subpart and subpart F of this part are applicable to loans insured in connection with plans of action being processed under either subpart B or C of part 248.

(f) An owner or purchaser may obtain both a rehabilitation loan under subpart A of this part and an equity loan or rehabilitation loan under this subpart.

§ 241.1005 Definitions.

(a) All of the definitions of § 241.1 apply to equity and acquisition loans insured under this subpart E except the following definitions:

241.1(i) Borrower
241.1(k) Energy conserving improvements
241.1(l) Solar energy system

(b) As used in this subpart, the following terms have the meaning indicated:

Acquisition loan means a loan or advance of credit made to a purchaser of eligible low income housing which is made for the purpose of implementing a plan of action approved in accordance with part 248 of this chapter.

Borrower means the owner or qualified purchaser of an eligible low income housing project, which owner receives and becomes primarily obligated for the repayment of an equity loan.

With respect to loans insured in connection with a plan of action under part 248, subpart C, the term includes a public entity, a nonprofit organization or a limited equity tenant cooperative corporation, which entity is purchasing an eligible low income housing project by means of an equity loan and is obligated for the payment of the equity loan.

Eligible low income housing has the same meaning as provided at § 248.101 or §248.201 of this chapter, with respect to loans insured in connection with plans of action under subparts B or C of part 248, respectively.

Equity means, for purpose of subparts E and F of this part only, the difference between the fair market value of the project as determined by the Commissioner and the outstanding indebtedness relating to the property.

Equity Loan means a loan or advance of credit to the owner of an eligible low income housing project which is made for the purpose of implementing a plan of action approved in accordance with part 248 of this chapter.

Extension preservation equity has the same meaning as provided at § 248.101 of this chapter.

Limited equity tenant cooperative corporation means a tenant cooperative corporation which, in a manner acceptable to the Commissioner, restricts the initial and resale price of the shares of stock in the cooperative corporation so that the shares remain affordable to lower income families and moderate income families.

Low income families has the same meaning as provided at § 248.101 of this chapter.

Moderate income families has the same meaning as provided at § 248.101 of this chapter.

Plan of action has the same meaning as provided at § 248.101 or § 284.201 of this chapter.

Preservation equity has the same meaning as provided at § 248.101 of this chapter.

Priority purchaser has the same meaning as provided at § 248.101 of this chapter.

Qualified purchaser has the same meaning as provided at § 248.101 of this chapter.

§ 241.1010 Feasibility letter.

(a) *Request for study.* The owner may request the Commissioner to undertake a feasibility analysis of an equity or acquisition loan, and issue a feasibility letter. At the discretion of the Commissioner the feasibility analysis may be undertaken or denied.

(b) *Findings.* The issuance of a feasibility letter indicates completion of the Commissioner's preliminary analysis for the insurance of an equity or acquisition loan. The feasibility letter shall contain the Commissioner's estimate of the supportable loan amount, based upon the project's equity in the case of an equity loan and based on the project's purchase price in the case of an acquisition loan, but such feasibility letter shall neither constitute a commitment to insure nor bind the Commissioner in any other manner.

(c) *Fee.* The Commissioner shall not charge a fee for undertaking a feasibility analysis or for the issuance of a feasibility letter.

§ 241.1015 Application and commitment fees.

(a) *Application.* An application for the issuance of either a conditional or firm commitment for insurance of an equity or acquisition loan on a project shall be submitted by an approved lender and by the owner or purchaser of the project to the Commissioner on a form prescribed by the Commissioner. No application shall be considered unless the exhibits called for by such forms are furnished.

(b) *Application and commitment fees*—(1) *Application for conditional commitment.* An application commitment fee of $2.00 per thousand dollars of the amount of the loan applied for shall accompany the application for a conditional commitment.

(2) *Application for firm commitment.* An application for a firm commitment shall be accompanied by the payment of an application-commitment fee in an amount which, when added to any prior fee received in connection with a conditional commitment application, will aggregate $3.00 per thousand dollars of the loan applied for.

§ 241.1020 Commitments.

(a) *Conditional commitment.* The issuance of a conditional commitment constitutes an agreement by the Commissioner, subject to specified terms and conditions, to accept an application for a firm commitment.

(b) *Firm Commitment.* The issuance of a firm commitment indicates the Commissioner's approval of the application for insurance and sets forth the terms and conditions upon which the equity or acquisition loan will be insured. The firm commitment may provide for the insurance of advances of equity or acquisition loan immediately upon endorsement of the note.

(c) *Term of commitment.*

(1) A conditional commitment is effective for whatever term is specified in the text of the commitment.

(2) A firm commitment is effective for whatever term is specified in the text of the commitment.

(3) The term of either a conditional commitment or firm commitment may be extended in such manner as the Commissioner may prescribe.

(d) *Reopening of expired commitments.* An expired conditional or firm commitment may be reopened if a request for reopening is received by the Commissioner within 90 days of the expiration of the commitment. The reopening request shall be accompanied by a fee of 50 cents per thousand dollars of the amount of the expired commitment. If the reopening request is not received by the Commissioner

within the required 90-day period, a new application, accompanied by the required application and commitment fee, must be submitted.

§ 241.1025 Refund of fees.

If the amount of the commitment issued is less than the amount applied for, the Commissioner shall refund the excess amount of the application and commitment fees submitted by the applicant. If an application is rejected before it is assigned for processing, or in such other instances as the Commissioner may determine, the entire application and commitment fees or any portion thereof may be returned to the applicant. Commitment and reopening fees may also be refunded to the applicant, in whole or in part, in such other instances as the Commissioner may determine.

§ 241.1030 Mortgage insurance premiums.

The lender, upon endorsement of the note, shall pay the Commissioner a first mortgage insurance premium equal to 0.5 percent of the original face amount of the equity or acquisition loan.

(a) If the date of the first principal payment is more than one year following the date of endorsement, the lender upon each anniversary of such endorsement date, shall pay a premium equal to 0.5 percent of the original face amount of the loan. On the date of the first principal payment, the lender shall pay another premium equal to 0.5 percent of the average outstanding principal obligation of the loan for the following year which shall be adjusted so as to accord with such date and so that the aggregate of said premiums shall equal the sum of:

(1) 0.5 percent of the average outstanding principal obligation of the loan for the year following the date of endorsement; and

(2) 0.5 percent per annum of the average outstanding principal obligation of the loan for the period from the first anniversary of the date of endorsement to one year following the date of the first principal payment.

(b) If the date of the first principal payment is one year or less than one year following the date of endorsement, the lender, upon such first principal payment date, shall pay a second premium equal to 0.5 percent of the average outstanding principal obligation of the loan for the following year which shall be adjusted so as to accord with such date and so that the aggregate of the said two premiums shall equal the sum of:

(1) 0.5 percent per annum of the average outstanding principal obligation of the loan for the period from the date of endorsement to the date of the first principal payment; and

(2) 0.5 percent of the average outstanding principal obligation of the loan for the year following the date of the first payment following the date of the first principal payment.

(c) Until the equity or acquisition loan is paid in full or until receipt by the Commissioner of an application for insurance benefits, or until the contract of insurance is otherwise terminated with the consent of the Commissioner, the lender on each anniversary date of the first principal payment, shall pay an annual insurance premium equal to 0.5 percent of the average outstanding principal obligation of the loan for the year following the date on which such premium becomes payable.

(d) The premiums payable on or after the date of the first principal payment shall be calculated in accordance with the amortizing provisions without taking into account delinquent payments or prepayments.

(e) Premiums shall be payable in cash or in debentures at par plus accrued interest. All premiums are payable in advance and no refund can be made of any portion thereof except as hereinafter provided in this subpart.

§ 241.1035 Charges by lender.

(a) The lender may collect from the borrower the amount of the fees provided for by this subpart.

(b) The lender may also collect from the borrower an initial service charge, as reimbursement for the cost of closing the transaction, in a amount not to exceed 2 percent of the original principal amount of the loan.

(c) Any charges to be collected by the lender in addition to those prescribed in paragraphs (a) and (b) of this section, shall be subject to the prior approval of the Commissioner.

§ 241.1040 Eligible lenders.

Lenders meeting the applicable eligibility qualifications and requirements contained in § 203.4 or §203.6 of this chapter are eligible for insurance of equity loans under this subpart.

§ 241.1045 Note and security form.

The Lender shall present for insurance a note and security instrument on forms approved by the Commissioner for use in the jurisdiction in which the property is located, which shall not be changed without the prior approval of the Commissioner. The security instrument shall provide for accelerated repayment at the request of the Commissioner pursuant to § 241.1046(b).

§ 241.1046 Rental assistance.

(a) When underwriting an equity or acquisition loan under this subpart, the Commissioner may assume that the rental assistance provided in accordance with a plan of action approved under subparts B or C of part 248 of this chapter will be extended for the full term of the contract entered into under the plan of action.

(b) In the event that rental assistance is not extended under part 248 of this chapter, or the Commissioner is unable to develop a revised package of incentives to the owner comparable to those received under the original approved plan of action, the Commissioner may require the mortgagee to accelerate the debt of the equity or acquisition loan.

(c) If the Commissioner is unable to extend the term of rental assistance for the full term of the contract entered into under part 248 of this chapter, the Commissioner is authorized to take such actions as the Commissioner deems appropriate to avoid default, avoid disruption of the sound ownership and management of the property or otherwise minimize the cost to the Federal Government.

§ 241.1050 Method of loan payment.

The loan shall provide for monthly payments on the first day of each month on account of interest and principal and shall provide for payments in accordance with the amortization plan as agreed upon by the borrower, the lender, and the Commissioner.

§ 241.1055 Date of first payment to principal.

The date for first payment to principal shall be established by the Commissioner.

§ 241.1060 Maturity.

The loan shall have a maturity equal to the remaining term of the first insured mortgage, or 20 years, whichever is longer.

§ 241.1065 Maximum loan amount—loans insured in connection with a plan of action under subpart C of part 248

The amount of the equity loan shall not exceed ninety percent of the owner's equity in the project, as determined by the Commissioner. Notwithstanding the above, the equity loan shall not exceed an amount which, when added to the existing indebtedness on the property, can be supported by 90 percent of the projected net income of the project, as determined by the Commissioner. The Commissioner, in making a determination regarding the amount of an equity loan and sums available to

service said loan, shall take into account the fact that the project's income may increase within the limits established by § 248.233(d) of this chapter.

§ 241.1067 Maximum loan amount—loans insured in connection with a plan of action under subpart B of part 248.

(a) The amount of the equity loan shall not exceed the lesser of 70 percent of the extension preservation equity of the project or the amount the Commissioner determines can be supported by the project on the basis of an 8 percent return on extension preservation equity, assuming normal debt service coverage.

(b) The amount of the acquisition loan shall not exceed 95 percent of the transfer preservation equity of the project, except that, if the purchaser is a priority purchaser, the loan may include any expenses associated with the acquisition, loan closing, and implementation of the plan of action, subject to the approval of the Commissioner.

(c) The owner or purchaser may receive an equity or acquisition loan pursuant to this subpart in combination with a rehabilitation loan insured under subpart A of this part.

§ 241.1069 Escrow requirements.

(a) An equity loan provided in connection with a plan of action under subpart B of part 248 shall provide for the lender to deposit, on behalf of the borrower, 10 percent of the loan amount in an escrow account, controlled by the Commissioner or a State housing finance agency approved by the Commissioner, which shall be made available to the borrower upon the expiration of the 5-year period beginning on the date the loan is made, subject to compliance with § 248.147 of this chapter.

(b) An equity loan provided in connection with a plan of action under either subpart B or subpart C of part 248 shall provide for the lender to phase in advances to reflect project rent levels.

§ 241.1070 Agreed interest rate.

The equity or acquisition loan shall bear interest at the rate agreed upon by the borrower and the lender.

§ 241.1080 Eligibility of title.

In order for the project to be eligible for insurance, the Commissioner shall determine that the title to the property is vested in the borrower as of the date the security instrument is filed for record. The title evidence will be examined by the Commissioner and the endorsement of the credit instrument for insurance shall be evidence of its acceptability.

§ 241.1085 Title evidence.

Upon insurance of the loan, the lender shall furnish to the Commissioner a policy of title insurance as provided in paragraph (a) of this section. If the lender is unable to furnish such policy for reasons satisfactory to the Commissioner, the lender shall furnish such evidence of title as provided in paragraph (b), (c) or (d) of this section as the Commissioner may require. Any policy of title insurance, or evidence of title required under this section shall be furnished without expense to the Commissioner. The acceptable types of title evidence are:

(a) A policy of title insurance issued by a company satisfactory to the Commissioner. Such policy shall comply with the "L.I.C. Standard Mortgage Form," or such other form as may be approved by the Commissioner; shall name the lender and the Secretary of Housing and Urban Development, as their respective interests may appear, as the insured; and shall become an owner's policy, running to the lender as owner upon its acquisition of the property in extinguishment of the debt, and to the Secretary as owner upon his acquisition of the property pursuant to the loan insurance contract;

(b) An abstract of title satisfactory to the Commissioner, prepared by an abstract company or individual engaged in the business of preparing abstracts of title, accompanied by a legal opinion satisfactory to the Commissioner, as to the quality of such title, signed by an attorney at law experienced in the examination of titles;

(c) A Torrens or similar title certification; or

(d) Evidence of title conforming to the standards of a supervising branch of the Government of the United States of America, or of any State or territory thereof.

§ 241.1090 Accumulation of next premium.

The security instrument shall provide for payments by the borrower to the lender on each interest payment date of an amount sufficient to accumulate in the hands of the lender one payment period prior to its due date the next annual insurance premium payable by the lender to the Commissioner. These payments shall continue only as long as the contract of insurance remains in effect.

§ 241.1095 Application of payments.

(a) The security instrument shall provide that all monthly payments to be made by the borrower shall be added together and the aggregate amount shall be paid by the borrower upon each monthly payment date in a single payment. The lender shall apply the payment in the following order:

(1) Premium charges under the contact of insurance;

(2) Interest on the loan; and

(3) Amortization of the principal of the loan.

(b) Any deficiency in the amount of any monthly payments required under paragraph (a) of this section shall constitute a default. The security instrument shall provide for a grace period of 30 days within which time the default must be cured.

§ 241.1100 Prepayment privilege and charges.

(a) *Prepayment privilege.* (1) Except as otherwise provided in paragraph (b) of this section, the security instrument shall contain a provision permitting the borrower to prepay the loan, in whole or in part, upon any interest payment date after giving to the lender 30 days advance notice of its intention to prepay.

(2) If the loan exceeds $200,000, the security instrument may contain a provision for an additional charge in the event of prepayment of principal as may be agreed upon between the borrower and lender. These charges shall not be imposed if the loan is accelerated at the request of the Commissioner, pursuant to § 241.1046(b). The borrower shall be permitted to prepay up to 15 percent of the original principal amount of the loan in any one calendar year without any additional charge. A provision for an additional charge in the event of prepayment may not be included in a loan of $200,000 or less.

(b) *Prepayment of bond-financed loan.* Where the lender has obtained the funds for the loan by the issuance and sale of bonds or bond anticipation notes, or both, the loan may contain a prepayment restriction and prepayment penalty charges acceptable to the Commissioner as to term, amount, and conditions.

§ 241.1105 Late charges.

The note and security instrument may provide for the lender's collection of a late charge, not to exceed 2 cents for each dollar of each payment to interest or principal more than 15 days in arrears, to cover the expense involved in handling delinquent payments. Late charges shall be separately charged to and collected from the borrower and shall not be deducted from any aggregate monthly payment.

§ 241.1120 Mortgagee's consent.

The holder of an insured mortgage which is recorded prior to the equity

loan shall not withhold its consent to the equity loan or the security instrument executed in connection with the equity loan, and may not charge a fee as a condition to its consent to such loan or security instrument.

Subpart F—Insurance for Equity Loans—Contract Rights and Obligations

§ 241.1200 Cross-references.

(a) *Projects with a HUD-insured or HUD-held mortgage.* (1) All the provisions of part 207, subpart B of this chapter, covering mortgages insured under section 207 of the Act, apply to equity loans or acquisition loans on a project insured under section 241(f) of the Act, except the following provisions:

Sec.
207.251 Definitions.
207.252 First, second and third premium.
207.252a Premiums—operating loss loans.
207.252b Premiums—mortgages insured pursuant to section 223(f) of the Act.
207.252c Premiums—mortgages insured pursuant to section 238(c) of the Act.
207.254 Insurance endorsement.

(2) For the purpose of this subpart, all references in part 207 of this chapter to section 207 of the Act and to the term "mortgage" shall be construed to refer to section 241(f) of the Act and "equity or acquisition loan," respectively.

(b) *Projects without a HUD-insured or HUD-held mortgage.* The provisions of subpart D of this part shall be applicable to a project without a HUD-insured or HUD-held mortgage that is receiving an equity loan or acquisition loan under subpart E of this part in connection with a plan of action approved by the Commissioner under part 248 of this chapter.

(c) All of the definitions in §241.1005 apply to this subpart. In addition, as used in this subpart, the term "contract of insurance" means the agreement evidenced by the Commissioner's insurance endorsement and includes the provisions of this subpart and of the Act.

§ 241.1205 Payment of insurance benefits.

All the provisions of §207.259 of this chapter relating to insurance benefits shall apply to an equity or acquisition loan insured under this subpart, except that insurance benefits shall be payable in cash if the insurance benefits under the senior insured mortgage are payable in cash, unless the lender files a written request for payment in debentures. If such a request is made, payment shall be made in debentures with a cash payment to adjust for any difference between the total amount of the insurance payment and the amount of the debentures issued.

§ 241.1210 Condition for payment of insurance benefits.

(a) All of the provisions of §207.258 of this chapter apply to this subpart, except that, if the holder of the senior insured mortgage institutes a foreclosure action, the lender shall notify the Commissioner in a timely manner of such action. The Commissioner, at its option, may then direct the lender to assign the equity or acquisition loan to the Commissioner, or bid an amount necessary to acquire the project and convey the project to the Commissioner.

(b) If the equity loan or acquisition loan is assigned in accordance with this section, the Commissioner at a foreclosure sale may bid, in addition to amounts otherwise authorized, any sum not in excess of the aggregate unpaid indebtedness secured by the senior insured mortgage and equity or acquisition loan, plus taxes, insurance, foreclosure costs, fees and other expenses.

§ 241.1215 Calculation of insurance benefits.

All of the provisions of §207.259 of this chapter apply to this subpart, except that if the lender, at the direction of the Commissioner, acquires title to the project at a foreclosure sale instituted by the holder of the senior insured mortgage, the amount of the claim determined under §207.259(c) of this chapter shall also include an amount bid by the lender to satisfy the senior insured mortgage at the foreclosure sale.

§ 241.1220 Termination of insurance benefits.

All of the provisions of §207.253a of this chapter apply to this subpart, except that the following shall also constitute grounds for terminating the contract of insurance:

(a) The failure of the lender to notify the Commissioner in a timely manner of a foreclsoure action initiated by the holder of the senior insured mortgage; and

(b) The failure of the lender when directed by the Commissioner to assign the equity or acquisition loan or bid an amount necessary to acquire title to the project and convey the project to the Commissioner, in accordance with § 241.1210 of this part.

§ 241.1230 No vested right in fund.

Neither the lender nor the borrower shall have any vested or other right in the insurance fund under which the loan is insured.

§ 241.1235 Cross default.

In the event the borrower commits a default under a prior recorded insured mortgage and the holder thereof initiates a foreclosure proceeding, said default under the prior recorded insured mortgage shall constitute a default under the equity or acquisition loan.

§ 241.1245 Insurance endorsement.

(a) *Endorsement.* The Commissioner shall indicate his insurance of the equity loan or acquisition loan by endorsing the original credit instrument and identifying the section of the Act and the regulations under which the loan is insured and the date of insurance.

(b) *Endorsement of phased loan.* In the event the loan is phased, the Commissioner shall indicate his insurance of each amount by endorsing the original credit instrument and identifying the section of the Act and the regulations under which such amount is insured and the date of the insurance.

(c) *Final advance of phased loan.* When all advances of a phased loan have been made and the terms and conditions of the commitment have been complied with to the satisfaction of the Commissioner, he or she shall indicate on the original credit instrument the total of all advances he has approved for insurance and again endorse such instrument.

§ 241.1250 Effect of endorsement.

From the date that the equity or acquisition loan is endorsed, the Commissioner and the lender shall be bound by the provisions of this subpart to the same extent as if they had executed a contract including the provisions of this subpart and the applicable sections of the Act.

PART 248—PREPAYMENT OF LOW INCOME HOUSING MORTGAGES

11. The authority for part 248 would be revised to read as follows:

Authority: Sections 201–235, Housing and Community Development Act of 1987, Public Law 100–242 (101 Stat. 1815); Section 604 of the Cranston-Gonzalez National Affordable Housing Act, Public Law 101–625. Sections 201-235, Low Income Housing Preservation and Resident Homeownership Act of 1990, Public Law 101–625 (12 U.S.C. 1715*l* note).

12. In chapter II, part 248, subpart A is revised, subpart B is redesignated as subpart C, a new subpart B is added, §§ 248.221, 248.233, 248.234, and 248.235 of newly designated subpart C would be revised and the table of contents for part 248 is set out to read as follows:

Subpart A—General

§ 248.1 Purpose.

The purpose of this part is to—

(a) Preserve and retain to the maximum extent practicable as housing affordable to low income families or persons those privately owned dwelling units that were produced for such purpose with Federal assistance, without unduly restricting the owners' prepayment rights;

(b) Minimize the involuntary displacement of tenants currently residing in such housing;

(c) Work in partnership with State and local government and the private sector in the provision and operation of housing that is affordable to very low, low and moderate income families; and

(d) Facilitate the sale of housing to residents under a resident homeownership program.

§ 248.3 Applicability.

The requirements of subparts B and C of this part apply to any project that is eligible low income housing, as defined in subparts B and C respectively, on or after November 1, 1987, except that such requirements shall not apply to a project which receives assistance under title IV, subtitle B of the Cranston-Gonzalez National Affordable Housing Act in connection with a homeownership program approved by the Secretary thereunder.

§ 248.5 Election to proceed under subpart B or subpart C.

(a) Any owner who submits a notice of intent on or after January 1, 1991, pursuant to either § 248.211 or § 248.105, shall proceed under subpart B of this part.

(b) Any owner who has filed a plan of action with the Commissioner on or before October 11, 1990 pursuant to subpart C of this part, regardless of whether or not the Commissioner has approved such plan of action or whether the owner has received incentives thereunder, may proceed under subpart B of this part by submitting a notice of intent to the Commissioner in accordance with § 248.105 prior to February 5, 1992, or within thirty days after the Commissioner notifies the owner of HUD's final approval of the plan of action, whichever is later. The notice of intent shall state that the owner is exercising its conversion right pursuant to this section. If the owner fails to file a notice of intent prior to that date, the owner forfeits its right of conversion. In awarding incentives to an owner who elects to proceed under subpart B of this part in accordance with this section, the Commissioner shall take into consideration any incentives which the owner has already received under subpart C of this part.

(c) Any owner of housing that becomes eligible low income housing, as defined in subpart B of this part, before January 1, 1991, and who before such date, filed a notice of intent under § 248.211 of subpart C of this part, may, unless a plan of action is submitted after October 11, 1990, elect to proceed under subpart B or under subpart C of this part. An owner wishing to proceed under subpart B or subpart C of this part must indicate its election by submitting a new notice of intent to the Commissioner within 60 days after the effective date of this rule, in accordance with either § 248.105 (for owners electing to proceed under subpart B of this part) or § 248.211 (for owners electing to proceed under subpart C of this part). Any owner who fails to file a notice of intent within the 60-day period may not proceed under subpart C, but may proceed under subpart B by filing a new notice of intent thereafter. For purposes of calculating any time periods or deadlines under this part for actions following the filing of the notice of intent, the date on which the owner submits the new notice of intent under this paragraph shall be deemed the date of the filing of the notice of intent.

(d) An owner who has filed a plan of action after October 11, 1990, pursuant to § 248.213 of this part, may not elect to proceed under subpart B of this part.

§ 248.7 Preemption of State and local laws.

(a) *In general.* No State or political subdivision of a State may establish, continue in effect, or enforce any law or regulation that—

(1) Restricts or inhibits the prepayment of any mortgage described in § 248.101 or the voluntary termination of any insurance contract pursuant to § 207.253 of this chapter on eligible low income housing projects;

(2) Restricts or inhibits an owner of such projects from receiving the authorized annual return provided under § 248.121;

(3) Is inconsistent with any provision of this subpart, including any law, regulation, or other restriction that limits or impairs the ability of any owner of eligible low income housing to receive incentives authorized to increase rental rates, transfer the project, obtain secondary financing, or use the proceeds of any such incentives; or

(4) In its applicability to low income housing is limited only to eligible low

income housing for which the owner has prepaid the mortgage or terminated the insurance contract.

(b) *Effect.* Any law, regulation or restriction described in paragraph (a) of this section shall be ineffective and any eligible low income housing exempt from the law, regulation, or restriction, only to the extent that it violates the provisions of this section.

(c) *Law of general applicability; contractual restrictions.* This section shall not prevent the establishment, continuing in effect, or enforcement of any law or regulation of any State or political subdivision of a State not inconsistent with the provisions of this subpart and relating to building standards, zoning limitations, health, safety, or habitability standards for housing, rent control, or conversion of rental housing to condominium or cooperative ownership, to the extent such law or regulation is of general applicability to both projects receiving Federal assistance and nonassisted projects. This section shall not preempt, or alter any contractual restrictions or obligations existing before November 28, 1990 that prevent or limit an owner of eligible low income housing from prepaying the mortgage on the project or terminating the mortgage insurance contract.

§ 248.9 Waivers.

Upon making a determination and finding a good cause, the Commissioner may waive any provision of this part, subject to statutory limitations. Each waiver shall be in writing and shall be supported by documentation of the facts and reasons which form the basis for the waiver.

Subpart B—Prepayments and Plans of Action Under the Low Income Housing Preservation and Resident Homeownership Act of 1990

§ 248.101 Definitions.

Acquisition Loan. A loan or advance of credit made to a qualified purchaser of eligible low income housing and insured by the Commissioner under part 241, subpart E of this chapter.

Adjusted Income. Annual income, as specified in §813.106 of this title, less allowances specified in the definition of "Adjusted Income" in §813.102 of this title.

Aggregate Preservation Rent. The extension preservation rent or transfer preservation rent, as defined under this section.

Annual Authorized Return. The amount an owner of an eligible low income housing project may receive in distributions from the project each year, plus debt service payments payable each year attributable to the equity takeout portion of any loan approved under the plan of action, expressed as a percentage of the project's extension preservation equity.

Bona Fide Offer. A certain and unambiguous offer to purchase an eligible low income housing project pursuant to this subpart made in good faith by a qualified purchaser with the intent that such offer result in the execution of an enforceable, valid and binding contract.

Capital Improvement Loan. A direct loan originated by the Secretary under part 219, subpart C of this chapter.

Community-Based Nonprofit Organization. A nonprofit organization that maintains, through significant representation on the organization's governing board and otherwise, accountability to low income community residents and to the extent practicable, low income beneficiaries with regard to decisions as to the management and preservation of affordable housing.

Default. For purposes of § 248.105(a), the failure of the owner to make any payment due under the mortgage (including the full amount of the debt if the mortgagee has accelerated the debt on the basis of a non-monetary default) within 30 days after such payment becomes due.

Eligible Low Income Housing. Any project that is not subject to a use restriction imposed by the Commissioner that restricts the project to low and moderate income use for a period at least equal to the remaining term of the mortgage, and that is financed by a loan or mortgage—

(1) That is—

(i) Insured or held by the Commissioner under §221(d)(3) of the National Housing Act and assisted under part 215 of this chapter or project-based assistance under parts 880, 881 or 886 of this title;

(ii) Insured or held by the Commissioner under part 221 of this chapter and bearing a below market interest rate as provided under §221.518(b) of this chapter;

(iii) Insured, assisted, or held by the Commissioner or a State or State agency under part 236 of this chapter; or

(iv) A purchaser money mortage held by the Commissioner with respect to a project which, immediately prior to HUD's acquisition, would have been classified under paragraph (1), (2) or (3) of this definition; and

(2) That, under regulation or contract in effect before February 5, 1988, is or will within 24 months become eligible for prepayment without prior approval of the Commissioner.

Equity Loan. A loan or advance of credit to the owner of eligible low income housing and insured by the Commissioner under part 241, subpart E of this chapter.

Extension Preservation Equity. The extension preservation equity of a project is:

(1) The extension preservation value of the project determined under §248.111; less

(2) The outstanding balance of any debt secured by the property.

Extension Preservation Rent. The extension preservation rent is the gross potential income for the project that would be required to support:

(1) The annual authorized return;

(2) Debt service on any rehabilitation loan for the project;

(3) Debt service on the federally-assisted mortgage for the project;

(4) Project operating expenses; and

(5) Adequate reserves.

Extension Preservation Value. The fair market value of the project based on the highest and best use of the project as multifamily market-rate rental housing.

Fair market rent. The section 8 existing fair market rent published for effect and as defined under §882.102 of this title, applicable to the jurisdiction in which the project is located, with adjustments, where appropriate, for projects in which tenants pay their own utilities.

Federal Cost Limit. The greater of 120 percent of the section 8 existing fair market rent for the market area in which the project is located or 120 percent of the prevailing rents in the relevant local market area in which the project is located.

Federally-assisted Mortgage. Any mortgage as defined in this section, any operating loss loan secured by the project and any loan insured by the Commissioner under part 241 of this chapter.

Good Cause. With respect to displacement, the temporary or permanent uninhabitability of the project justifying relocation of all or some of the project's tenants (except where such uninhabitability is caused by the actions or inaction of the owner), or actions of the tenant that, under the terms of the tenant's lease and applicable regulations, constitute a basis for eviction.

HOME Investment Trust Fund. A public fund established in the general local or State government in which a project is located pursuant to title II of the Cranston-Gonzalez National Affordable Housing Act.

Homeownership Program. A program developed by a resident council for the

sale of an eligible low income housing project to the tenants in accordance with the standards in § 248.173.

Interest Reduction Payments. Payments made by the Secretary pursuant to a contract to reduce the interest costs on a mortgage insured under part 236 of this chapter, as provided under subpart C of part 236 of this chapter.

Limited Equity Cooperative. A cooperative housing corporation in which the income eligibility of purchasers or appreciation upon resale of membership shares, or both, are restricted in order to maintain the project as available to and affordable by low and moderate income families and persons.

Low Income Affordability Restrictions. Limits imposed by regulation or regulatory agreement on tenant rents, rent contributions, or income eligibility with respect to eligible low income housing.

Low Income Families. Families or persons whose incomes do not exceed the levels established for low income families under part 813 of this title.

Low Vacancy Area. A market area in which the current supply of vacant available rental units, as a proportion of the total overall rental inventory in the area is not sufficient to allow for normal growth and mobility, taking into account the need for vacancies resulting from turnover and to meet growth in renter households. The determination of a low vacancy area, as set forth in § 248.165(h), will be made by the Commissioner, utilizing the most recent available data for the market area on the rental inventory, renter households, rental vacancy rates and other factors as appropriate.

Moderate Income Families. Families or persons whose incomes are between 80 and 95 percent of median area income, as determined by the Commission, with adjustments for smaller and larger families.

Mortgage. The mortgage or deed of trust insured or held by the Commissioner or a State or State agency under parts 221 or 236 of this title or the purchase money mortgage taken back by the Commissioner in connection with the sale of a HUD-owned project and held by the Commissioner, where such mortgage, deed or trust or purchase money mortgage is secured by eligible low income housing.

Nonprofit Organization. Any private, nonprofit organization that—

(1) Is organized or chartered under State or local laws;

(2) Has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual;

(3) Complies with standards of financial accountability acceptable to the Commissioner; and

(4) Has among its principal purposes significant activities related to the provision of decent housing that is affordable to very low, low, and moderate income families.

Notice of Intent. An owner's notification to the Commissioner of its intention to terminate the low income affordability restrictions on the project through prepayment of the mortgage or voluntary termination of the insurance contract, to extend the low income affordability restrictions on the project, or to transfer the project to a qualified purchaser.

Owner. The mortgagor or trustor under the mortgage secured by eligible low income housing.

Participating Jurisdiction. For purposes of the resident homeownership program established in § 248.173, any State or unit of general local government that has been so designated in accordance with section 216 of title I of the Cranston-Gonzalez National Affordable Housing Act of 1990.

Plan of Action. A plan providing for the termination of the low income affordability restrictions on the project through prepayment of the mortgage or voluntary termination of the insurance contract, for extension of the low income affordability restrictions on the project, or for the transfer of the project to a qualified purchaser. A homeownership program constitutes a plan of action for purposes of this subpart.

Prepayment. Prepayment in full of a mortgage, or a partial prepayment or series of partial prepayments that reduces the mortgage term by at least six months, except where the prepayment in full or partial prepayment results from the application of condemnation proceeds.

Preservation Equity. The extension preservation equity or transfer preservation equity, as defined under this section.

Preservation Value. The extension preservation value or transfer preservation value, as defined under this section.

Priority Purchaser. Any entity that is not a related party to the owner and that is either—

(1) A resident council organized to acquire the project in accordance with a resident homeownership program that meets the requirements of this subpart; or

(2) Any nonprofit organization or State or local agency that agrees to maintain low income affordability restrictions for the remaining useful life of the project. A nonprofit organization or State or local agency that is affiliated with a for-profit entity for purposes of purchasing a project under this subpart shall not be considered a priority purchaser.

Public Housing Agency. A public housing agency, as defined in section 3(b) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)).

Qualified Purchaser. Any entity that is not a related party to the owner and that agrees to maintain low income affordability restrictions for the remaining useful life of the project, and includes for-profit entities and priority purchasers.

Regulatory Agreement. The agreement executed by the owner and the Secretary or a State agency providing for the regulation of the operation of the project.

Related Party. An entity that, either directly or indirectly, is wholly or partially owned or controlled by the owner of the project being transferred under this subpart, is under whole or partial common control with such owner, or has any financial interest in such owner or in which such owner has any financial interest. For purposes of this definition, the owner and the purchaser shall be considered "related parties" if the owner has made or intends to make any loan to the purchaser in connection with the transfer of the project, or if any officer, director or employee of the owner is an officer or director of the purchaser. The purchaser and the owner shall not be deemed related parties solely by reason of the purchaser's retention of a property management entity of a company that is owned or controlled by the owner or a principal thereof, if retention of the management company is neither a condition of sale nor part of consideration paid for the project and the property management contract is negotiated by the qualified purchaser on an arm's length basis.

Relevant Local Market. An area geographically smaller than the a market area established by the Commissioner for purposes of determining the section 8 existing fair market rent, that is identifiable as a distinct rental market area in which similar projects and units would effectively compete with the subject project, for potential tenants.

Relocation Expenses. Relocation expenses shall consist of payment for—

(1) Advisory services, including timely information, counseling (including the provision of information on a resident's rights under the Fair Housing Act), and referrals to suitable, affordable, decent,

safe and sanitary alternative housing; and

(2) Payment for actual, reasonable moving expenses.

Remaining Useful Life. With respect to eligible low income housing, the period during which the physical characteristics of the project remain in a condition suitable for occupancy, assuming normal maintenance and repairs are made and major systems and capital components are replaced as becomes necessary.

Reserve for Replacements. The escrow fund established under the regulatory agreement for the purpose of ensuring the availability of funds for needed repair and replacement costs.

Resident Council. Any incorporated nonprofit organization or association that—

(1) Is representative of the residents of the project;

(2) Adopts written procedures providing for the election of officers on a regular basis; and

(3) Has a democratically elected governing board, elected by the residents of the project.

Residual Receipt Fund. The fund established under the regulatory agreement for holding cash remaining after deducting from the surplus cash, as defined by the regulatory agreement, the amount of all allowable distributions.

Return on Investment. The amount of allowable distributions that a purchaser of a project may receive under a plan of action under § 248.157 or § 248.161.

Section 8 Assistance. Assistance provided under parts 880 through 887 of this title.

Special Needs Tenants. Those "elderly persons," "elderly families," or families that include "disabled persons," as such terms are defined in § 812.2 of this title.

Tenant Representative. A designated officer of an organization of the project's tenants, a tenant who has been elected to represent the tenants of the project with respect to this subpart, or a person or organization that has been formally designated or retained by an organization of the project's tenants to represent the tenants with respect to this subpart. To qualify as a tenant representative under this subpart, the person or organization claiming such status must have been elected as a representative by, or its retention endorsed by, tenants representing at least 50 percent of the units occupied at the time of the election or endorsement, either by vote or signature on a petition.

Termination of Low Income Affordability Restrictions. The elimination of low income affordability restrictions under the regulatory agreement through termination of mortgage insurance or prepayment of the mortgage.

Transfer Preservation Equity. The transfer preservation equity of a project is:

(1) The transfer preservation value of the project determined under § 248.111; less

(2) The outstanding balance of the federally-assisted mortgage or mortgages for the project.

Transfer Preservation Rent. For purposes of receiving incentives pursuant to a sale of the project, transfer preservation rent shall be the gross income for the project that would be required to support:

(1) Debt service on the loan for acquisition of the project;

(2) Debt service on any rehabilitation loan for the project;

(3) Debt service on the federally-assisted mortgage for the housing;

(4) Project operating expenses; and

(5) Adequate reserves.

Transfer Preservation Value. The fair market value of the project based on its highest and best use.

Very Low Income Families. Families or persons whose incomes do not exceed the level established for very low income families under § 813.102 of this title.

Voluntary Termination of Mortgage Insurance. The termination of all rights under the mortgage insurance contract and of all obligations to pay future insurance premiums.

§ 248.103 General prepayment limitation.

(a) *Prepayment.* An owner of eligible low income housing may prepay, and a mortgagee may accept prepayment of, a mortgage on such project only in accordance with a plan of action approved by the Commissioner.

(b) *Termination.* A mortgage insurance contract with respect to eligible low income housing may be terminated pursuant to § 207.253 of this chapter only in accordance with a plan of action approved by the Commissioner.

(c) *Foreclosure.* A mortgagee of a mortgage insured by the Commissioner may foreclose the mortgage on, or acquire by deed in lieu of foreclosure, any eligible low income housing only if the mortgagee also conveys title to the project to the Commissioner in connection with a claim for insurance benefits.

(d) *Effect of unauthorized prepayment.* A mortgagee's acceptance of a prepayment in violation of paragraph (a) of this section, or the voluntary termination of a mortgage insurance contract in violation of paragraph (b) of this section, shall be null and void and any low income affordability restrictions on the project shall continue to apply to the project.

(e) *Remedies for unauthorized prepayment.* A mortgagee's acceptance of a prepayment in violation of paragraph (a) of this section, or attempt to obtain voluntary termination of a mortgage insurance contract in violation of paragraph (b) of this section, is grounds for administrative action under parts 24 and 25 of this title, in addition to any other remedies available by law, including rescission of the prepayment or reinstatement of the insurance contract.

§ 248.105 Notice of intent.

(a) *Eligibility for filing.* An owner of eligible low income housing intending to prepay the mortgage or voluntarily terminate the mortgage insurance contract pursuant to § 248.141, extend the low income affordability restrictions of the housing in accordance with § 248.153, or transfer the housing to a qualified purchaser under § 248.157, may file a notice of intent unless the mortgage covering the project—

(1) Continued in default or fell into default on or after the November 28, 1990, and the mortgage has been assigned to the Commissioner as a result of such default;

(2) Continued in default or fell into default on or after November 28, 1990, while the mortgage was held by the Commissioner;

(3) Fell into default prior to November 28, 1990, if the owner entered into a workout agreement prior to that date, and on or after that date, the owner has defaulted under the workout agreement (and, if the agreement was with an insured mortgagee, the mortgage has been assigned to the Commissioner as a result of the default under the workout agreement); or

(4) Fell into default prior to November 28, 1990, but has been current since that date and the owner has not agreed to recompense the appropriate insurance fund for losses sustained by the fund as a result of any work-out or other arrangement agreed to by the Commissioner and the owner with respect to the defaulted mortgage.

(b) *Filing with the Commissioner.* The notice of intent shall be filed with the HUD Field Office in whose jurisdiction the project is located. The notice of intent shall identify the project by name, project number and location, briefly describe the owner's plans for the project, and the reason the owner seeks to prepay the mortgage, terminate the mortgage insurance contract, extend the

income restrictions, or transfer the project. The notice of intent shall also request the tenants to notify the owner and the Commissioner of any individual or organization that has been designated or retained by the tenants to represent the tenants with respect to the actions to be taken under this subpart.

(c) *Filing with the State or local government and tenants.* The owner simultaneously shall file the notice of intent with the chief executive officer of the appropriate State or local government in which the project is located, and with the mortgagee. In addition, the owner shall deliver a copy of the notice of intent to each tenant in the project and to any tenant representative, if any, known to the owner, and shall post a copy of the notice of intent in readily accessible locations within each affected building of the project. If the project includes a substantial number of non-English speaking tenants, the notice of intent shall be translated into a language understood by such tenants. The copies of the notice of intent delivered to the tenants and the tenant representative shall include a summary of possible outcomes of the filing which shall be furnished by the Commissioner.

§ 248.111 Appraisal and preservation value of eligible low income housing.

(a) *Appraisal.* Upon receiving a notice of intent indicating an intent to extend the low income affordability restrictions under § 248.153 or transfer the project under § 248.157, the Commissioner shall provide for determination of the preservation values of the project pursuant to this section.

(b) *Notice.* Within 30 days after the filing of a notice of intent to extend the income restrictions or to transfer the project, the Commissioner shall provide the owner with written notice of—

(1) The need for, and the rules and guidelines governing, an appraisal of the project;

(2) The filing deadline for submission of the appraisal;

(3) The need for an appraiser retained by the Commissioner to inspect the project and the project's financial records; and

(4) Any delegation to an appropriate State agency, if any, by the Commissioner of responsibilities regarding the performance of an appraisal pursuant to this section.

(c) *Appraisers.* The Commissioner and the owner shall each select and compensate an appraiser who shall:

(1) Neither be an employee of the Federal Government nor an employee or officer of any entity that is affiliated with the owner;

(2) Be certified by the appropriate State agency under the standards established by the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989; and

(3) Have six years of experience in the appraisal profession and at least three years' experience in the practice of appraising multifamily residential properties.

(d) *Guidelines.* The Commissioner shall provide to each appraiser guidelines for the conduct of the appraisal. The guidelines estabished by the Commissioner shall be consistent with customary appraisal standards. The guidelines shall assume repayment of the existing federally-assisted mortgage, termination of the existing low income affordability restrictions, and costs of compliance with any State or local laws of general applicability. The guidelines may permit reliance upon assessments of rehabilitation needs and other conversion costs determined by an appropriate State agency, as determined by the Commissioner.

(e) *Operating expenses.* For the purpose of determining preservation values, the guidelines shall instruct the appraiser to use the greater of actual project operating expenses at the time of the appraisal, based on the average of the actual project operating expenses during the preceding three years, or projected operating expenses after conversion, as determined by the Commissioner. However, if the current year operating expenses are higher than those of the preceding three years and the Commissioner has made a determination that these costs are unlikely to decrease in the future, the appraiser shall use current year operating expenses rather than projected operating expenses for purposes of comparison with projected operating expenses after conversion.

(f) *Preservation values.* The preservation values will be determined on the basis of the appraisals conducted by the owner's and the Commissioner's independent appraisers. Each appraiser will determine both the extension preservation value and the transfer preservation value, regardless of the owner's intentions as indicated in the notice of intent.

(g) *Highest and best use as residential property.* In determining the extension preservation value of the project, the appraiser shall assume conversion of the project to market-rate rental housing. The appraiser shall, in accordance with the guidelines established by the Commissioner, determine the amount of rehabilitation expenditures that would be necessary to bring the project up to quality standards required to attract and sustain a market-rate tenancy upon conversion and assess other costs that the owner could reasonably be expected to incur if the owner converted the property to market-rate multifamily rental housing.

(h) *Highest and best use.* In determining the transfer preservation value for the project, the appraiser shall assume conversion of the project to highest and best use for the property, and shall, in accordance with the guidelines established by the Commissioner, determine the amount of any rehabilitation expenditures that would be necessary to convert the project to such use and assess other costs that the owner could reasonably be expected to incur if the owner converted the property to its highest and best use.

(i) *Submission of appraisal.* Within four months after filing the notice of intent:

(1) The owner shall submit to the HUD Field Office in whose jurisdiction the project is located, the appraisal made by the owner's selected appraiser; and

(2) The Commissioner's selected appraiser shall conduct and submit an appraisal to the Commissioner.

(j) *Joint determination of preservation values.* No later than one month after the submission of the appraisal by the owner to the HUD Field Office, the owner and the Commissioner, shall, on the basis of the appraisals delivered to them, agree on the preservation values of the project. If no agreement as to preservation values can be reached, the owner and the Commissioner shall jointly select a third appraiser meeting the qualifications set forth in paragraph (c) of this section by the end of six months from the date that the notice of intent was filed. The cost of this third appraisal shall be borne equally by both parties. The third appraiser must comply with the guidelines set forth in paragraph (d) of this section and must conduct the appraisal and submit an appraisal within two months after accepting the assignment. The determination by the third appraiser of the project's preservation values shall be binding on both the owner and the Commissioner.

(k) *Timeliness of appraisals.* The Commissioner may approve a plan of action to receive incentives under §§ 248.153, 248.157 or 248.161 only based upon an appraisal conducted in accordance with this section that is not more than 30 months old, unless the failure of the Commissioner to approve the plan of action within the 30-month period was due to circumstances beyond the control of the owner.

§ 248.121 Annual authorized return and aggregate preservation rents.

(a) *Annual authorized return.* For each eligible low income housing project appraised under § 248.111, the Commissioner shall set an annual authorized return on the project equal to 8 percent of the extension preservation equity.

(b) *Aggregate preservation rents.* For each eligible low income housing project appraised under § 248.111, the Commissioner shall also determine the aggregate preservation rents. The aggregate preservation rents shall be used solely for the purposes of comparison with the Federal cost limit under § 248.123. Actual rents received by the owner (or a qualified purchaser) shall be determined pursuant to § 248.153, § 248.157, and § 248.161.

(c) *Extension preservation rent.* The extension preservation rent shall be the gross potential income for the project, as determined by the Commissioner, that would be required to support—

(1) The annual authorized return determined under paragraph (a);

(2) Debt service on any rehabilitation loan for the project, assuming a market rate of interest and customary terms;

(3) Debt service on the federally-assisted mortgage for the project;

(4) Project operating expenses as determined by the Commissioner; and

(5) Adequate reserves.

(d) *Transfer preservation rent.* The transfer preservation rent shall be the gross income for the project, as determined by the Commissioner, that would be required to support—

(1) Debt service on the loan for acquisition of the project;

(2) Debt service on any rehabilitation loan for the project, assuming a market rate of interest and customary terms;

(3) Debt service on the federally-assisted mortgage for the project;

(4) Project operating expenses; and

(5) Adequate reserves.

(e) *Adequate reserves.* For purposes of this section—

(1) Adequate reserves are the amount of funds which, when added to existing reserves, are sufficient to maintain the project, including needed deferred maintenance, at a level that meets the standards set forth in § 248.147; and

(2) Project operating expenses shall be based on operating expenses for the preceding 3 years, adjusted for reasonable reductions in operating costs due to rehabilitation and energy improvements.

(f) *Debt service.* For purposes of this section, the amount of debt service for an acquisition loan will be estimated based on the maximum loan to which the purchaser is entitled under § 241.1067 of this chapter. The debt service on any rehabilitation loan will be estimated using costs derived from the appraisals conducted under § 248.111, taking into account any funds provided for rehabilitation by State or local governments and assuming market rate interest rates.

§ 248.123 Determination of Federal cost limit.

(a) *Initial determination.* For each eligible low income housing project appraised under § 248.111, the Commissioner shall determine whether the aggregate preservation rents for the project exceed the amount determined by multiplying the number of dwelling units in the project, according to appropriate unit sizes, by 120 percent of the section 8 existing fair market rent for the appropriate unit size.

(b) *Relevant local markets.* If either the extension or transfer preservation rent for a project exceeds the amount determined under paragraph (a) of this section, the Commissioner shall determine whether such extension or transfer preservation rent exceeds the amount determined by multiplying the number of units in the project, according to the appropriate unit sizes, by 120 percent of the prevailing rents in the local market area. The relevant local market, and the prevailing rents in such relevant local market, shall be determined on the basis of the appraisal conducted by the appraiser selected by the Commissioner pursuant to § 248.111 and any other information that the Commissioner determines is appropriate. If there are no comparables in the relevant local market and it is not otherwise possible to determine prevailing rents in that area, the section 8 existing fair market rent shall be the sole measure for determining the Federal cost limit.

(c) *Effect.* The extension or transfer preservation rent for an eligible low income housing project appraised under § 248.111 shall be considered to exceed the Federal cost limit only if the extension or transfer preservation rent exceeds the amount determined under paragraphs (a) and (b) of this section.

§ 248.127 Limitations on action pursuant to Federal cost limit.

(a) *Retention of the project.* With respect to owners who seek to retain the project, the owner may file a plan of action to receive incentives under § 248.153, except that if the extension preservation rent exceeds the Federal cost limit, the amount of the incentives may not exceed an amount that can be supported by a projected income stream equal to the Federal cost limit.

(b) *Transfer of the project.* With respect to owners who seek to transfer the project—

(1) If the transfer preservation rent does not exceed the Federal cost limit, or if the transfer preservation rent exceeds the Federal cost limit and the owner is willing to transfer the project at a price which will result in project rents that, on an aggregate level, do not exceed the Federal cost limit, the owner may file a second notice of intent indicating an intention to transfer the project under § 248.157; or

(2) If the transfer preservation rent exceeds the Federal cost limit, the owner may file a second notice of intent to transfer the project under § 248.161 or, if no bona fide offers are received, to prepay the mortgage or terminate the mortgage insurance.

§ 248.131 Information from the Commissioner.

(a) *Information to owners terminating affordability restrictions.* Within six months after receipt of a notice of intent to terminate the low income affordability restrictions under § 248.141, the Commissioner shall provide the owner with a description of the criteria for such termination and with information that the owner needs to prepare a plan of action. This shall include information concerning the standards under § 248.141 regarding the approval of a plan of action and a list of the Federal incentives authorized under § 248.153 and available to those projects for which a plan of action involving termination of low income affordability restrictions, through prepayment of the mortgage or termination of the mortgage insurance contract, would not be approvable. The Commissioner shall also provide the owner with any other relevant information which the Commissioner may possess.

(b) *Information to owners extending affordability restrictions.* Within nine months of receipt of a notice of intent to extend the low income affordability restrictions under § 248.153 or to transfer the project under § 248.157, the Commissioner shall provide the owner who submitted the notice with—

(1) A statement of the preservation values of the project as determined under § 248.111;

(2) A statement of the aggregate preservation rents for the project as calculated under § 248.121;

(3) A statement of the applicable Federal cost limit for the market area (or relevant local market, if applicable) in which the project is located, and an explanation of the limitations under § 248.127 on the amount of assistance

the Commissioner may provide based on such cost limits;

(4) A statement of whether either of the aggregate preservation rents exceeds the Federal cost limit; and

(5) A direction to file a plan of action and the information necessary to file a plan of action; or

(6) A direction to submit a second notice of intent under § 248.133.

(c) *Information to tenants.* The Commissioner shall make any information provided to the owner under paragraphs (a) and (b) of this section available to the tenants, together with other information relating to the rights and opportunities of the tenants, including—

(1) The potential opportunity of the tenants to become priority purchasers under § 248.157 and § 248.161; and

(2) The potential opportunity of resident homeownership under § 248.173.

§ 248.133 Second notice of intent.

(a) *Filing.* A second notice of intent must be filed by all owners who, after receiving the information provided by the Commissioner in § 248.131, elect to—

(1) Transfer the project under § 248.157 or § 248.161; or

(2) Prepay the mortgatge or voluntarily terminate the insurance contract on the mortgage pursuant to § 248.141.

(b) *Timeliness.* A second notice of intent must be submitted not later than 30 days after receipt of the information provided by the Commissioner under § 248.131. If an owner who is required to submit a second notice of intent fails to do so within this time period, the original notice of intent submitted under § 248.105 shall be void and ineffective for purposes of this subpart.

(c) *Filing with the State or local government and tenants.* The owner simultaneously shall file the second notice of intent with the chief executive officer of the appropriate State or local government in which the project is located, and with the mortgagee. In addition, the owner shall deliver a copy of the second notice of intent to each tenant in the project and to any tenant representative, if any, known to the owner, and shall post a copy of the second notice of intent in readily accessible locations within each affected building of the project.

§ 248.135 Plans of action.

(a) *Submission.* An owner seeking to terminate the low income affordability restrictions through prepayment of the mortgage or voluntary termination under § 248.141, or to extend the low income affordability restrictions on the project under § 248.153, shall submit a plan of action to the Commission in the form and manner prescribed in paragraph (d) or (e) of this section respectively, within 6 months after receipt of the information from the Commissioner under § 248.131.

(b) *Joint Submission.* An owner and purchaser seeking a transfer of the project under § 248.157 or § 248.161 shall jointly submit a plan of action to the Commissioner in the form and manner prescribed in paragraph (e) of this section within 90 days after the owner's acceptance of a bona fide offer under § 248.157 or the purchaser's making of a bona fide offer under § 248.161.

(c) *Filing with the State or local government and tenants.* The owner shall notify the tenants of the plan of action by posting in each occupied building a summary of the plan of action and by delivery of a copy of the plan of action to the tenant representative, if any. In addition, the summary must indicate that a copy of the plan of action shall be available for inspection and copying during reasonable hours in a location convenient to the tenant. Simultaneously with the submission to the Commissioner, the owner shall submit the plan of action to the office of the chief executive officer of the appropriate State or local government for the jurisdiction within which the project is located. An appropriate agency of such State or local government shall review the plan of action and advise the tenants of the project of any programs that are available to assist the tenants in carrying out the purposes of this subpart.

(d) *Termination of affordability restrictions.* If the plan of action proposes to terminate the low income affordability restrictions through prepayment or voluntary termination in accordance with § 248.141, it shall include:

(1) A description of any proposed changes in the status or terms of the mortgage or regulatory agreement;

(2) A description of any proposed changes in the low income affordability restrictions;

(3) A description of any change in ownership that is related to prepayment or voluntary termination;

(4) An assessment of the effect of the proposed changes on existing tenants;

(5) An analysis of the effect of the proposed changes on the supply of housing afforable to low and very low income families or persons in the community within which the project is located and in the area that the housing could reasonably be expected to serve; and

(6) Any other information that the Commissioner determines is necessary to achieve the purposes of this subpart.

(e) *Extension of affordability restrictions.* If the plan of action proposes to extend the low income affordability restrictions of the project in accordance with § 248.153 or transfer the project to a qualified purchaser in accordance with § 248.157 or § 248.161, the plan of action shall include:

(1) A description of any proposed changes in the status or items of the mortgage or regulatory agreement;

(2) A description of the Federal incentives requested, including cash flow projections and analyses of how the owner will address any physical or financial deficiencies and maintain the low income affordability restrictions of the project;

(3) A description of any assistance from State or local government agencies, including low income housing tax credits that have been offered to the owner or purchaser or for which the owner or purchaser has applied or intends to apply;

(4) A description of any transfer of the property, including the identity of the transferee and a copy of any documents of sale;

(5) An income profile of the tenants as of January 1, 1987 (based on the area median income limits established by the Commissioner in February 1987) and as of the date of submission of the plan of action;

(6) A transfer of physical assets package; and

(7) Any other information that the Commissioner determines is necessary to achieve the purposes of this subpart.

(f) *Revisions.* The owner and purchaser may from time to time jointly revise and amend the plan of action as may be necessary to obtain approval here under this subpart and must amend the plan of action no later than 30 days after a change in any of the information required in paragraphs (d) or (e) of this section. The owner or purchaser shall submit any revision to the Commissioner, and provide a copy of the revision to the office of the chief executive officer of the appropriate State or local government for the jurisdiction within which the project is located, and (unless the purchaser is a resident council or other organization comprised of the project's tenants) to the tenants of the project, and to any tenant representative, if any, known to the owner.

(g) *Failure to Submit.* If the owner fails to submit a plan of action to the Commissioner when prepayment or termination is sought within the 6 month

period set forth in paragraph (a) of this section or, when a transfer is sought, if the owner and purchaser fail to submit a plan of action within the 90-day time period set forth in paragraph (b) of this section, the notice of intent filed by the owner under § 248.105 shall be ineffective for the purposes of this subpart and the owner shall be barred from submitting another notice of intent under § 248.105 until 6 months after expiration of such period.

(h) *Notification to tenants of plan of action approval.* Upon the Commission's approval of the plan of action, the owner shall notify tenants of the terms thereof by posting in each occupied building a summary of the plan of action and by delivery of a copy of the plan of action to the tenant representative, if any. In addition, the summary must indicate that a copy of the plan of action shall be available for inspection and copying during reasonable hours in a location convenient to the tenants.

§ 248.141 Criteria for approval of a plan of action involving prepayment and voluntary termination.

(a) *Approval.* The Commissioner may approve a plan of action that provides for the termination of the low income affordability restrictions through prepayment of the mortgage or voluntary termination of the mortgage insurance contract only upon a written finding that—

(1) implementation of the plan of action will not—

(i) Materially increase economic hardship for current tenants, and will not in any event result in a monthly rental payment by any current tenant that exceeds 30 percent of the monthly adjusted income of the tenant or an increase in the monthly rental payment in any year that exceeds 10 percent (whichever is lower); or in the case of a current tenant who already pays more than such pecentage, an increase in the Consumer Price Index or 10 percent (whichever is lower); or

(ii) Involuntarily displace current tenants (except for good cause) where comparable and affordable housing is not readily available, determined without regard to the availability of Federal housing assistance that would address any such hardship or involuntary displacement; and

(2) The supply of vacant, camparable housing is sufficient to ensure that such prepayment will not materially affect—

(i) The availability of decent, safe, and sanitary housing affordable to low income and very low income families or persons in the area that the housing could reasonably be expected to serve;

(ii) The ability of low income and very low income families or persons to find affordable, decent, safe, and sanitary housing near employment opportunities; or

(iii) The housing opportunities of minorities in the community within which the housing is located.

(3) There are no open findings of noncompliance with title VI of the Civil Rights Act of 1964; the Fair Housing Act; Executive Order 11063; and Age Discrimination Act of 1975; Section 504 of the Rehabilitation Act of 1973; and all regulations promulgated under such statutes and authorities, and no open audit findings with respect to violations of the regulatory agreement.

(b) *Disapproval.* If the Commissioner determines a plan of action to prepay a mortgage or terminate an insurance contract fails to meet the requirements of paragraph (a) of this section, the Commissioner shall disapprove the plan and within a reasonable time, and shall inform the owner of the reasons for disapproval and suggest alternatives. In the case of disapproval of the plan of action, except for the failure to meet the requirement of paragraph (a)(3) of this section, the notice of intent filed under § 248.105 shall be rendered ineffective for the purposes of this subtitle, and the owner, in order to receive incentives, must file a new notice of intent under such section. If the plan of action is disapproved because of an outstanding civil rights or audit finding, the finding must be closed before the Commissioner will approve a plan of action under this section.

§ 248.145 Criteria for approval of a plan of action involving incentives.

(a) *Approval.* The Commissioner may approve a plan of action for extension of the low income affordability restrictions on an eligible low income housing project or transfer the housing to a qualified purchaser, other than a resident council, only upon a finding that—

(1) Due diligence has been given to ensuring that the package of incentives set forth in the plan of action is, for the Federal Government, the least costly alternative that is consistent with the full achievement of the purposes of this subpart. The Commissioner will conduct a "windfall profits" test to determine whether the project is located in a rental market where there is an adequate supply of decent, affordable housing. If the project is located in such a rental market, and if the provision of incentives would not serve other public policy objectives under this subpart, then no incentives will be provided to the owner;

(2) The project will be retained as housing affordable for very low, low and moderate income families and persons for the remaining useful life of the project, as determined under paragraph (a)(8);

(3) Throughout the remaining useful life of the project, adequate expenditures will be made for maintenance and operation of the project and that the project meets the housing standards established in § 248.147 as determined by inspections conducted by the Commissioner;

(4) Current tenants will not be involuntarily displaced, except for good cause;

(5) Any increase in rent contributions for current tenants will be to a level that does not exceed 30 percent of the adjusted income of the tenant or the fair market rent, whichever is lower. However, the rent contributions of any tenants occupying the project at the time of any increase may not be reduced by reason of this paragraph, except with respect to tenants receiving section 8 assistance in accordance with paragraph (a)(7) of this section;

(6) Any resulting increase in rents for current tenants (except for increases made necessary by increased operating costs) shall be phased in as follows:

(i) If such increase is 30 percent or more, the increase shall be phased in equally over a period of not less than three years, with the first increase occurring upon the effective date of the plan of action, and the subsequent two increases occurring annually thereafter;

(ii) If such increase is more than 10 percent but less than 30 percent, it shall be limited to not more than 10 percent per year;

(7) Section 8 assistance shall be provided, to the extent appropriations are available, if necessary to mitigate any adverse effect on current very low and low income tenants;

(8) Rents for unit becoming available to new tenants shall be at levels approved by the Commissioner, taking into account any incentives provided under this subpart, that will ensure, to the extent practicable, that the units will be available and affordable to the same proportions of very low, low and moderate income families and persons, including families and persons whose incomes are 95 percent or more of area median income, as based on the area median income limits established by the Commissioner in February 1987, as resided in the project as of January 1, 1987, or the date the plan of action is approved, whichever date results in the highest proportion of very low income families. This limitation shall not

prohibit a higher proportion of very low income families and persons from occupying the project;

(9) Future rent adjustments shall be—

(i) Made by applying an annual factor, to be determined by the Commissioner, to the portion of rent attributable to operating expenses for the project; and

(ii) Subject to a procedure, established by the Commissioner, for owners to apply for rent increases not adequately compensated by annual adjustment under paragraph (a)(9)(i) of this section, under which the Commissioner may increase rents in excess of the amount determined under paragraph (a)(9)(i) of this section only if the Commissioner determines such increases are necessary to reflect extraordinary necessary expenses of owning and maintaining the project;

(10) Any savings from reductions in operating expenses due to management efficiencies shall be deposited in project reserves for replacement and the owner shall have periodic access to such reserves, to the extent the Commissioner determines that the level of the reserves is adequate and that the project is maintained in accordance with the standards established in § 248.147;

(11) The mortgage on the project is current; and

(12) There are no open findings of noncompliance with title VI of the Civil Rights Act of 1964; the Fair Housing Act; Executive Order 11063; the Age Discrimination Act of 1975; section 504 of the Rehabilitation Act of 1973; and all regulations promulgated under such statutes and authorities, and no open audit findings with respect to violations of the regulatory agreement.

(b) *Compliance with housing standards.* No incentives under § 248.153 may be provided, other than to qualified purchasers under §§ 248.157 and 245.161, and no distributions may be taken by the owner or purchaser, until the Commissioner determines that the project meets the housing standards set forth in § 248.147, except that incentives designed to correct deficiencies in the project may be provided.

(c) *Implementation.* Any agreement to maintain the low income affordability restrictions for the remaining useful life of the project may be made through execution of a new regulatory agreement, modifications to the existing regulatory agreement or mortgage, or in the case of prepayment of a mortgage or voluntary termination of mortgage insurance, a recorded instrument.

(d) *Determination of remaining useful life.* The Commissioner shall make determinations, on the record and after opportunity for a hearing, as to when the useful life of an eligible low income housing project has expired. Under procedures and standards to be established by the Commissioner, owners of eligible low income housing may petition the Commissioner for a determination that the useful life of such project has expired. Such petition may not be filed before the expiration of the 50-year period beginning upon the approval of a plan of action under this subpart with respect to such project. In making a determination pursuant to a petition under this paragraph, the Commissioner shall presume that the useful life of the project has not expired, and the owner shall have the burden of proof in establishing such expiration. The Commissioner may not determine that the useful life of any project has expired if such determination results primarily from failure to make regular and reasonable repairs and replacement, as became necessary. In making a determination regarding the useful life of any project pursuant to a petition submitted under this paragraph, the Commissioner shall provide for comment by tenants of the project and interested persons and organizations with respect to the petition. The Commissioner shall also provide the tenants and interested persons and organizations with an opportunity to appeal a determination under this paragraph.

§ 248.147 Housing standards

(a) *Standards.* As a condition to receiving incentives under this subpart, the owner shall agree to maintain the project in accordance with local housing codes and the housing quality standards set forth in § 887.251 of this title. Where a housing quality standard conflicts with local housing codes, the owner shall maintain the project in compliance with the standard that is stricter.

(b) *Annual inspections.* The Commissioner shall inspect each project at least annually in order to determine compliance with the standards in paragraph (a). The Commissioner shall notify the owner of any deficiencies within 30 days following the inspection. The owner shall have 90 days from the date of such notification to correct any deficiencies cited by the Commissioner and shall promptly notify the Commissioner when such deficiencies have been corrected. The Commissioner shall reinspect the project upon such notification or, if the owner does not notify the Commissioner, upon the expiration of the 90-day period.

(c) *Sanctions for noncompliance.* If the Commissioner determines, upon reinspection of the project, that the project is still not in compliance with the standards set forth in paragraph (a), the Commissioner shall take any action appropriate to bring the project into compliance, including—

(1) Directing the mortgagee, with respect to an equity take-out loan provided under part 241 of this chapter, to withhold the disbursement to the owner of any escrowed loan proceeds and requiring that such proceeds be used for repair of the project; and

(2) Reduce the amount of the allowable distributions to 4 percent of extension preservation equity or (in the case of a purchaser) 4 percent of cash invested, as appropriate, for the period ending upon a determination by the Commissioner that the project is in compliance with the standards and requiring that such amounts be used for repair.

(d) *Continued compliance.* To ensure continued compliance with the standards set forth in paragraph (a) of this section for a project subject to any action under paragraph (c) of this section, the Commissioner may limit access of and use by the owner of such amounts set forth in paragraph (c) of this section, for not more than the 2-year period beginning upon the determination that the project is in compliance with the housing standards.

(e) *Sanctions for continuous noncompliance.* If, upon inspection, the Commissioner determines that any eligible low income housing project has failed to comply with the standards established under this section for two consecutive years, the Commissioner may, upon notification to the owner of the noncompliance, take one or more of the following actions:

(1) Subject to the availability of appropriations, provide assistance, other than project-based assistance attached to the project, under parts 882 and 887 of this title for any tenant eligible for such assistance who desires to terminate occupancy in the project. For each unit in the project vacated pursuant to the provision of assistance under this paragraph, the Commissioner may, notwithstanding any other law or contract for assistance, cancel the provision of project-based assistance attached to the project for one dwelling unit, if the project is receiving such assistance, or convert the project-based assistance allocation for that unit to assistance under part 882 or 887 of this title;

(2) In the case of projects for which an equity take-out loan has been made under part 241 of this chapter, direct the mortgagee to declare such a loan to be in default and accelerate the maturity date of the loan;

(3) Declare, or direct the insured mortgagee to declare, any rehabilitation loan insured or provided by the Commissioner with respect to the project, including loans provided under part 219 of this chapter, to be in default and accelerate the maturity date of the loan; and

(4) Suspend payments under or terminate any contract for project-based rental assistance under section 8 of the United States Housing Act of 1937.

(f) *Sanctions not exclusive.* The Commissioner may take any other action authorized by law or the project regulatory agreement to ensure that the project will be brought into compliance with the standards established under this section or with other requirements pertaining to the condition of the project.

§ 248.149 Timetable for approval of a plan of action.

(a) *Notification of deficiencies.* Not later than 60 days after receipt of a plan of action, the Commissioner shall notify the owner in writing of any deficiencies that prevent the plan of action from being approved. Such notice shall describe alternative ways in which the plan may be revised to meet the criteria for approval set forth in § 248.145.

(b) *Notification of approval.* Not later than 180 days after receipt of a plan of action, or such longer period as the owner requests, but not more than 365 days, the Commissioner shall notify the owner in writing whether the plan of action, including any revisions, is approved. If approval is withheld, the notice shall describe—

(1) The reasons for withholding approval; and

(2) Suggestions to the owner for meeting the criteria for approval.

(c) *Opportunity to revise.* The Commissioner shall give the owner a reasonable opportunity, of not more than 60 days, to revise the plan of action when approval is denied. If the owner fails to comply with this time period, it shall not be eligible for relief under paragraph (d) of this section.

(d) *Delayed approval.* If the Commissioner fails to approve a plan of action within the time set forth in paragraph (b) of this section, the Commissioner shall provide incentives and assistance under this subpart, to an owner who is entitled to receive such incentives and assistance, in the amount that the owner would have received if the Commissioner had complied with such time limitations. This paragraph does not apply to plans of action that are not approved because of deficiencies.

§ 248.153 Incentives to extend low income use.

(a) *Agreements by the Secretary.* After approving a plan of action filed pursuant to § 248.145, from an owner of eligible low income housing that includes the owners's plan to extend the low income affordability restrictions of the project, the Commissioner shall, subject to the availability of appropriations for such purpose, enter into such agreements as are necessary to enable the owner to—

(1) Receive the annual authorized return for the project as determined under § 248.121;

(2) Pay debt service on the federally-assisted mortgage covering the project;

(3) Pay debt service on any loan for rehabilitation of the project;

(4) Meet project operating expenses; and

(5) Establish adequate reserves.

(b) *Permissible incentives.* Such agreements may include one or more of the following incentives, as determined necessary by the Secretary:

(1) Increased access to residual receipts accounts as necessary to enable the owner to realize the annual authorized return;

(2) An increase in the rents permitted under an existing project-based section 8 contract;

(3) Additional project-based section 8 assistance or an extension of any project-based assistance attached to the housing;

(4) An increase in the rents on non-section 8 units occupied by current tenants up to the maximum allowable rents;

(5) Financing of capital improvements under part 219 of this chapter;

(6) Financing of rehabilitation through provision of insurance for a second mortgage under part 241 of this chapter;

(7) Redirection of the Interest Reduction Payment subsidies to a second mortgage for projects which are insured, assisted, or held by the Commissioner or a State or State agency under part 236 of this chapter;

(8) Access by the owner to a portion of the preservation equity in the project through provision of insurance for an acquisition or equity loan insured under part 241, subpart E of this chapter or through a non-insured mortgage loan approved by the Commissioner and the mortgagee;

(9) An increase in the amount of allowable distributions; and

(10) Other incentives authorized in law.

(c) *Limitation on the provision of permissible incentives.* (1) The total amount of incentives provided to a project under paragraphs (b)(2), (3), and (4) of this section shall not result in a projected rental income stream which exceeds the Federal cost limit.

(2) The debt service on the loan obtained by the owner under paragraph (b)(8), when added to the allowable distributions under paragraph (b)(9), shall not exceed the annual authorized return.

(d) *Interest reduction subsidies.* Where Interest Reduction Payment subsidies are sought to be redirected, pursuant to paragraph (b)(7) of this section, the lender may not unreasonably withhold its consent to such redirection.

(e) *Recalculation of section 236 basic rent and market rent.* With respect to any project with a mortgage insured or otherwise assisted pursuant to part 236 of this chapter, the basic rent and market rent, as defined in § 236.2 of this chapter, for each unit in such project may be increased to take into account the allowable distributions permitted under this section and the debt service on any equity loan, rehabilitation loan or acquisition loan approved under a plan of action under this subpart.

§ 248.157 Voluntary sale of housing not in excess of Federal cost limit.

(a) *Offer to sell.* Where an owner has submitted a second notice of intent under § 248.133 for the purpose of transferring the project to a qualified purchaser, and the transfer preservation value does not exceed the Federal cost limit, the owner shall offer the housing for transfer as provided in this section. The owner shall not be obligated to accept any offer made under this section, but may instead elect to retain the project and receive incentives under § 248.145.

(b) *Notification of qualified purchasers.* Upon receipt of a second notice of intent to transfer the project to a qualified purchaser, the Commissioner shall notify potential qualified purchasers of the availability of the project for sale, and of the names and addresses of the owner, or of a person representing the owner in the sale of the project, by—

(1) Mailing notices to non-profit organizations;

(2) Placing notices in the major local newspaper(s) in the jurisdiction in which the project is located;

(3) Mailing notices to clearinghouse networks; and

(4) Using any other means of notification which the Secretary determines would be effective to notify potential qualified purchasers of the sale of the project.

(c) *Right of first offer to priority purchasers.* (1) For the 12-month period beginning on the date of receipt by the Commissioner of a second notice of intent under § 248.133, the owner may offer to sell the project only to priority purchasers.

(2) If no bona fide offer to purchase the project is made and accepted during or at the end of the 12-month period specified in paragraph (c)(1) of this section, the owner may offer to sell the project during the 3 months immediately following the 12-month period only to qualified purchasers.

(d) *Purchase price.* The sale price, including assumption of the debt on the federally-assisted mortgage, may not exceed the transfer preservation value of the project.

(e) *Expression of interest.* Any priority purchaser seeking to make an offer during the 12-month period specified in paragraph (c)(1) shall, and other qualified purchasers may, submit written notice thereof to the Commissioner. Such notice, if made by a priority purchaser seeking to make an offer during the 12-month period, shall contain the following—

(1) A statement identifying the priority purchaser as a State or local government agency, a nonprofit organization, or a resident council;

(2) A copy of its articles of incorporation, charter and list of officers and directors, if the purchaser is a nonprofit organization or a resident council; and

(3) A statement as to whether the purchaser is affiliated with any other entity for purposes of purchasing the project and whether any Low Income Housing Tax Credits may be awarded in connection with the purchase of the project.

(f) *Information from the Commissioner.* Within 30 days of receipt of an expression of interest by a priority purchaser, the Commissioner shall determine the status of the priority purchaser with respect to the categories listed in paragraph (h) of this section, and provide such purchaser with—

(1) A list of all possible assistance available from the Federal Government to facilitate a transfer of the project;

(2) The appraisal reports for the project as submitted under § 248.111;

(3) The Commissioner's determination as to the priority status of the purchaser and as to whether the purchaser qualifies as a resident council, community-based nonprofit organization or State or local government entity; and;

(4) Any other relevant financial information that the Commissioner possesses concerning the project, including the information determined under § 248.121. Within the same 30 day period, the Commissioner shall also notify the owner of the purchaser's expression of interest and instruct the owner to provide to the purchaser any information concerning the project that the Commissioner deems relevant to the transfer of the project.

(g) *Bona fide offer.* A bona fide offer must include the following:

(1) A contract of sale signed by the purchaser, which states that acceptance of the contract is contingent upon approval by the Commissioner; and

(2) An earnest money deposit in the amount of one percent of the transfer preservation value.

(h) *Retention and acceptance of offers.* The owner shall hold all bona fide offers received from priority purchasers until the expiration of the 12-month period stated in paragraph (c) of this section, provided, however, that an owner who receives a bona fide offer from a resident council seeking to purchase the project under a resident homeownership program may accept the offer at any time during the 12-month period. If an owner does not receive such an offer from a resident council or does not wish to accept such an offer prior to the expiration of the 12-month period, then the 12-month purchase period will continue unabated and at the end of that period, the owner may accept the highest offer among those received, not to exceed the transfer preservation value. If more than one purchaser offers the highest amount, the owner must select the purchaser based on the following order of priority:

(1) A resident council offering to purchase under a homeownership program;

(2) A community-based nonprofit organization;

(3) A State or local government; and

(4) Any other nonprofit organization.

(i) *Submission of offer to HUD.* Upon preliminary acceptance of an offer, the owner shall submit the offer to the Commissioner. The Commissioner shall review the offer to determine whether it meets the requirements of a bona fide offer. The Commissioner shall notify the owner or purchaser, within 30 days after receipt, whether the offer meets such requirements. The owner's preliminary acceptance of any offer pursuant to this section shall be conditional upon the Commissioner's certification that the offer is bona fide. If the Commissioner determines that the offer is not a bona fide offer, the offer will be considered invalid for the purposes of this subpart.

(j) *Submission of plan of action.* Upon a determination by the Commissioner that the offer is bona fide and final acceptance of such an offer, the owner and purchaser shall jointly submit a plan of action to the Commissioner pursuant to § 248.135. The plan of action shall include any request for assistance from the Commissioner for purposes of transferring the project. Upon final acceptance of an offer, the owner shall return all earnest money deposits to the other offerors.

(k) *Requirements for plan of action approval.* If the qualified purchaser of the project is a resident council seeking to purchase the project under a resident homeownership program, the Commissioner may approve a plan of action only if the resident council's proposed resident homeownership program meets the requirements under § 248.173. For all other qualified purchasers, the Commissioner may approve a plan of action submitted pursuant to this section only if the plan of action meets the criteria listed in § 248.145.

(l) *Failure to consummate sales transaction.*

(1) If the owner accepts an offer from a resident council during the 12-month period specified in paragraph (c) of this section, and the sales transaction falls through during that period or does not close within 90 days after the Secretary's approval of the plan of action, the owner shall resume holding the project open for sale for remainder of the time periods specified in paragraph (c) of this section.

(2) If the owner accepts an offer from a purchaser at the end of the 12-month period or during the 3-month period, both as specified in paragraph (c) of this section, or thereafter, and the sales transaction falls through or does not close within 90 days after the Secretary's approval of the plan of action, the owner shall take the following steps:

(i) Immediately notify the Commissioner that the sale has fallen through;

(ii) Contact any other purchaser that had submitted an offer to purchase the project and give such purchaser and any other qualified purchaser 60 days from the date of notification to the Commissioner in which to resubmit an offer to purchase the project.

(3) At the end of the 60-day period the owner may accept an offer submitted under paragraph (l)(2) in accordance with the order of priority set forth in paragraph (h).

(4) If an offer submitted during the 60-day period specified in paragraph (l)(2) is made and accepted, but the sale is not consummated within 90 days of the Commissioner's approval of the plan of action for reasons not attributable in

whole or in part to the owner, the owner may terminate the low income affordability restrictions through prepayment or voluntary termination, subject to compliance with the provisions of § 248.165.

(m) *Assistance.* Subject to the availability of amounts approved in appropriation acts, the Commissioner, shall, for approvable plans of action, provide assistance sufficient to enable qualified purchasers to—

(1) Acquire the eligible low income housing project from the current owner for a purchase price not greater than the transfer preservation value of the project;

(2) Pay the debt service on the federally-assisted mortgage covering the project;

(3) Pay the debt service on any loan for the rehabilitation of the project;

(4) Meet project operating expenses and establish adequate reserves for the housing;

(5) Receive a return on investment in an amount equal to 8 percent on any actual cash investment made to acquire the project;

(6) In the case of a priority purchaser, receive an adequate reimbursement for transaction expenses relating to acquisition of the project, subject to approval by the Commissioner in accordance with standards applicable to insured loan transactions under this chapter; and

(7) In the case of an approved resident homeownership program, cover the costs of training for the resident council, homeownership counseling and training, the fees for the nonprofit entity or public agency working with the resident council, if such entity or agency is approved by the Commissioner, and costs related to relocation of tenants who elect to move. Assistance for such costs, exclusive of relocation expenses, shall not exceed $500 per unit or $200,000 for the project, whichever is less.

(n) *Incentives: residual receipts.* The Commissioner may provide assistance for all qualified purchasers under this subpart in the form of one or more of the incentives authorized under § 248.153, except that any residual receipts for the project transferred to the owner shall be deducted from the sale price of the project. The incentives provided by the Commissioner to any qualified purchaser may include an acquisition loan provided under subpart E of part 241 of this chapter.

(o) *Grants to priority purchasers.* The Commissioner may provide assistance for priority purchasers under this subpart in the form of a grant for each unit in the project in an amount, as determined by the Commissioner, that does not exceed the present value of the total of the projected fair market rent for the next ten years, or such longer period if additional assistance is necessary to cover the costs set forth in paragraph (m) of this section.

(p) *Reimbursement of assistance.* The Commissioner reserves the right to seek reimbursement from a priority purchaser who, at any time while a plan of action is in effect, becomes affiliated with or transfers the project to any non-priority purchaser. The Commissioner shall be entitled to receive reimbursement for the difference between the assistance provided to the priority purchaser and the assistance that would have been provided in the same circumstances to a non-priority purchaser.

§ 248.161 Mandatory sale of housing in excess of the Federal cost limit.

(a) *In general.* With respect to any eligible low income housing for which the transfer preservation rent determined under § 248.121 exceeds the Federal cost limit, the owner shall offer the housing for transfer to qualified purchasers as provided in this section.

(b) *Applicability of voluntary sale provisions.* The provisions of § 248.157, other than paragraphs (a), (d), and (p) thereof, shall be applicable to any sale conducted under this section, except that in the case of a sale pursuant to this section, the sales price of the project may not be less than the transfer preservation value of the project, and if the owner receives an offer to purchase the project for a sale price not less than the preservation value of the project, as determined under § 248.111, the owner shall be obligated to accept the offer and sell the project to the purchaser.

(c) *Section 8 assistance.* Subject to the availability of amounts approved in appropriation acts, the Commissioner shall, for approvable plans of action, provide assistance to qualified purchasers under part 886, subpart A sufficient to produce a gross income potential equal to the amount determined by multiplying 120 percent of the prevailing rents in the relevant local market in which the project is located by the number of units in the project, according to appropriate unit size, and any other incentives authorized under § 248.153 that would have been provided to a qualified purchaser under § 248.157.

(d) *Grants to qualified purchasers.* From amounts made available by Congress, the Commissioner may make grants to assist in the completion of transfers under this section to any qualified purchasers. Any grant made pursuant to this paragraph shall be in an amount not exceeding the difference between the amount of assistance provided under paragraph (c) of this section and the amount of assistance specified in § 248.157(m).

(e) *Securing State and local funding.* The Commissioner shall assist any qualified purchaser of a project pursuant to this section in securing funding and other assistance, including tax and assessment reductions from State and local governments to facilitate a transfer under this section.

§ 248.165 Assistance for displaced tenants.

(a) *Section 8 assistance.* Each low income family that is displaced as a result of the prepayment of the mortgage or voluntary termination of an insurance contract on eligible low income housing shall, subject to the availability of funds, receive assistance under parts 882 or 887 of this title.

(b) *Notification of Commissioner.* The owner of any eligible low income housing project who prepays the mortgage or voluntarily terminates the mortgage insurance contract pursuant to this subpart, shall notify the Commissioner of the names and addresses of all of the tenants in the project who will be displaced as a result of prepayment or termination of the insurance contract, as well as the size of the unit in which each of the tenants who will be displaced are currently dwelling. The owner shall provide the Commissioner with this information within 30 days of identifying such tenants for displacement, but in no event less than 30 days prior to the date when the tenants must vacate the premises.

(c) *Relocation of displaced tenants.* The Commissioner shall coordinate with public housing agencies to ensure that any very low or low income family displaced from eligible low income housing as the result of prepayment of the mortgage or termination of the mortgage insurance contract on such project is able to acquire a suitable, affordable dwelling unit in the area where the project from which the family is displaced is located. The Commissioner, upon receiving information from the owner under paragraph (b) of this section stating that certain tenants will be displaced, shall request from the public housing agencies located in the same area as the affected project, notices of vacancies in other affordable projects which would be suitable for the displaced tenants. The Commissioner shall convey the notices of vacancies to the tenants who will be

displaced along with the addresses of the local public housing agencies.

(d) *Relocation expenses.* The Commissioner shall require the owner of eligible low income housing who prepays or terminates the insurance contract resulting in the displacement of tenants to pay 50 percent of the relocation expenses of each family which is relocated, except that the Commissioner shall increase such percentage to the extent that State or local law of general applicability requires a higher payment by the owner.

(e) *Continued occupancy.* Each owner that prepays the mortgage or terminates the mortgage insurance contract on eligible low income housing shall, as provided in paragraph (g) of this section, allow all tenants occupying units in such project on the date of submission of a notice of intent under § 248.105 to remain in the project for a period of three years, commencing on the date of prepayment or contract termination, at rent levels existing at the time of prepayment or termination, except for rent increases made necessary due to increased operating costs.

(f) *Replacement unit.* In any case in which the Commissioner requires an owner to allow tenants to occupy units under paragraph (e) of this section, an owner may fulfill the requirements of such paragraph by providing such assistance necessary for the tenant to rent a decent, safe, and sanitary unit in another project for the same 3-year period and at a rental cost to the tenant not in excess of the rental amount the tenant would have been required to pay to the owner in the owner's project, except that the tenant must freely agree to waive the right to occupy the unit in the owner's project. The provisions of paragraph (d) of this section requiring an owner who prepays or terminates an insurance contract to pay a portion of the relocation expenses incurred by displaced tenants shall also be applicable to tenants who relocate pursuant to this paragraph.

(g) *Applicability.* The provisions of paragraphs (e) and (f) of this section shall apply only to—

(1) All tenants in eligible low income housing projects located in a low-vacancy area; and

(2) Special needs tenants.

(h) *Low Vacancy Areas.* The Commissioner shall notify the owner, within 30 days of the approval of a plan of action, whether the project is located in a low vacancy area for purposes of paragraph (g) of this section.

(i) *Required acceptance of section 8 assistance.* Any owner who prepays the mortgage or terminates the mortgage insurance contract on eligible low income housing and maintains the project for residential rental occupancy may not refuse to rent, refuse to negotiate for the rental of, or otherwise make unavailable or deny the rental of a dwelling unit in such project to any person, or discriminate against any person in the terms, conditions, or privileges or rental of a unit, or in the provision of services or facilities in connection therewith, because the person receives assistance under parts 882 or 887 of this title.

(j) *Regional pools.* In providing assistance under this section, the Commissioner shall allocate the assistance on a regional basis through the regional offices of the Department of Housing and Urban Development. The Commissioner shall allocate assistance under this section in a manner so that the total number of assisted units in each such region available for occupancy by, and affordable to, low income families and persons does not decrease because of the prepayment of a mortgage on eligible low income housing or the termination of an insurance contract on such project.

§ 248.169 Permissible prepayment or voluntary termination and modification of commitments.

(a) *In general.* Notwithstanding any limitations on prepayment or voluntary termination under this subpart, an owner may terminate the low income affordability restrictions through prepayment or voluntary termination, subject to compliance with the provisions of § 248.165, under one of the following circumstances:

(1) The Commissioner is unable to approve a plan of action because of a lack of appropriated funds, or the Commissioner approves a plan of action under § 248.153(a), but does not provide the assistance approved in such plan and contained in an executed use agreement between the Commissioner and the owner, including section 8 assistance, a loan provided under part 219 of this chapter, assistance for a homeownership program under § 248.173, a grant provided under § 248.157(o), or a grant under § 248.161(d), but not including insurance of a rehabilitation, equity take-out, or acquisition loan under part 241 of this chapter, during the 15-month period beginning on the date of final approval of the plan of action;

(2) After the date that the project would have been eligible for prepayment pursuant to the terms of the mortgage, notwithstanding this part, the Commissioner approves a plan of action under § 248.157 or § 248.161, but does not provide the assistance approved in such plan before the earlier of—

(i) The expiration of the 2-month period beginning on the commencement of the first fiscal year beginning after such final approval; or

(ii) The expiration of the 6-month period beginning on the date of final approval.

(3) The Commissioner approves a plan of action under § 248.157 for any eligible low income housing not covered by paragraph (a)(2) of this section, but does not provide the assistance approved in such plan before the earlier of—

(i) The expiration of the 2-month period beginning on the commencement of the first fiscal year beginning after such final approval; or

(ii) The expiration of the 9-month period beginning on the date of final approval.

(4) An owner who intended to transfer the project to a qualified purchaser under § 248.157 or § 248.161, and fully complied with the provisions of such section,

(i) Did not receive any bona fide offers from any qualified purchasers within the applicable time periods; or

(ii) Received and accepted a bona fide offer from a qualified purchaser, but the sales transaction fell through for reasons not attributable in whole or in part to the owner, and the owner then complied with the requirements of § 248.157(*l*) and did not receive another bona fide offer from any qualified purchasers.

(b) *Section 8 assistance.* When providing section 8 assistance, the Commissioner may enter into a contract with an owner, contingent upon the future availability of appropriations, for the purpose of renewing expiring contracts for rental assistance as provided in appropriations acts, to extend the term of such rental assistance for such additional period or periods necessary to carry out an approved plan of action. The contract and the approved plan of action shall provide that, if the Commissioner is unable to extend the term of such rental assistance or is unable to develop a revised package of incentives providing benefits to the owner comparable to those received under the original approved plan of action, the Commissioner, upon the request of the owner, shall take the following actions, subject to the limitations under the following paragrapns—

(1) Modify the binding commitments made pursuant to § 248.145(a) (2)–(10) that are dependent upon such rental assistance; or

(2) If the Commissioner determines that such modification is infeasible,

permit the owner to prepay the mortgage and terminate the plan of action and any implementing use agreements or restrictions, but only if the owner agrees in writing to comply with the provisions of § 248.165.

(c) *Failure to provide section 8 assistance.* With regard to paragraph (b) of this section, the Commissioner shall notify the owner of an inability to either extend the term of section 8 rental assistance or to develop a revised package of incentives providing benefits comparable to those received under the original plan of action as soon as practicable upon discovering that fact. The owner shall inform the Commissioner in writing, within 30 days of receipt of the notice that, since the Commissioner is unable to fulfill the terms of the original plan of action, the owner intends to request that the Commissioner take action under paragraph (b) (1) or (2) of this section. The Commissioner shall, no later than 90 days from receiving the owner's notice, take action to extend the rental assistance contract and to continue the binding commitments under § 248.145(a) (2)–(10).

§ 248.173 Resident homeownership program.

(a) *Formation of resident council.* Tenants seeking to purchase eligible low income housing in accordance with § 248.157 and § 248.161 shall organize a resident council for the purpose of developing a resident homeownership program in accordance with standards established by the Commissioner. In order to fulfill the purposes of this section, the resident council shall work with a public or private nonprofit organization or a public body, including an agency or instrumentality thereof. Such organization shall have sufficient experience to enable it to help the tenants to consider their options and to develop the capacity necessary to own and manage the project, where appropriate, and shall be approved by the Commissioner.

(b) *Submission of expression of interest.* A resident council shall identify itself as such in an expression of interest submitted pursuant to § 248.157 or § 248.161 and shall state that it is interested in purchasing the project pursuant to a homeownership program.

(c) *Bona fide offer.* When submitting an offer to purchase the project pursuant to this section, the resident council must simultaneously submit a certified list of project tenants representing at least 75 percent of the occupied units in the project, and representing at least 50 percent of all of the units in the project, who have expressed an interest in participating in the homeownership program developed by the resident council. An offer made without this certified list will not be considered a bona fide offer for the purposes of this subpart.

(d) *Submission of a homeownership program.* (1) The resident council shall prepare a homeownership program acceptable to the Commissioner for giving all residents of the project an opportunity to become homeowners. The plan shall describe the major elements of, and schedules for, the homeownership program and demonstrate how the program complies with all applicable requirements of this section. The plan shall also describe the resident council's current abilities and proposed capacity-building activities to successfully carry out the homeownership program in compliance with this section. The homeownership program shall include, at a minimum, the following information:

(i) The amount of grant funds requested from the Commissioner, and the expected amounts and sources of other funding;

(ii) The proposed use of the grant funds to be received from HUD and of all other funds, including proceeds from the sale of units to initial purchasers, consistent with paragraph (h) of this section;

(iii) A summary of major rehabilitation activities to be carried out, including repairs, replacements and improvements;

(iv) The price at which the resident council intends to transfer ownership interests in, or shares representing, units in the project, broken down by unit size and/or type; the factors that will influence the establishment of such price, including, but not limited to, the resident council's acquisition cost, estimated rehabilitation costs, capitalization of reserves and organizational costs; how the price arrived at by the resident council compares to the estimated appraised value of the ownership interests or shares; and the underwriting standard that the resident council plans to use, or reasonably expects a public or private lender to use, for potential tenant purchasers, consistent with paragraph (g)(2) of this section;

(v) The expected number of very low, low and moderate income tenants that will be initial owners under the program, consistent with paragraph (g)(1) of this section;

(vi) A pro forma analysis which demonstrates the financial feasibility and viability of the homeownership program, based on the required conditions specified in paragraph (g) of this section;

(vii) The financing arrangements that the tenants are expected to pursue or to be provided, including financing available through the resident council or a State or local governmental entity, and criteria for acceptability of conventional financing;

(viii) A description of the estimated costs expected to be paid by the homeowner at closing;

(ix) The type of homeownership contemplated, consistent with paragraph (f) of this section;

(x) How the marketing of currently vacant units and units occupied by nonpurchasing tenants that become vacant will affect the sales price and occupancy charges to purchasers;

(xi) A workable schedule of sale, subject to the limitations of paragraph (o) of this section, based on estimated tenant incomes;

(xii) Any restrictions on resale by homeowners over and above those specified in paragraph (i) of this section, and any restrictions on homeowners' equity, over and above those specified in paragraph (k) of this section;

(xiii) The qualifications of the resident council or the proposed management entity to manage the project, in compliance with paragraph (n) of this section;

(xiv) The expected number of non-purchasing tenants and their eligibility for section 8 rental assistance under paragraph (m)(2) of this section;

(xv) Expected scope and expenses of relocation activities, both for any temporary relocation due to rehabilitation as well as relocation assistance for non-purchasing tenants, consistent with paragraph (m)(4) of this section;

(xvi) Expected scope and costs of technical assistance, training and counseling for the resident council, purchasers and non-purchasing tenants; and

(xvii) A certification that the resident council shall comply with the provisions of the Fair Housing Act, title VI of the Civil Rights Act of 1964, Executive Order 11063, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and all regulations issued pursuant to these statutes and authorities.

(2) The Commissioner shall give the resident council a reasonable opportunity to revise the homownership program if approval is denied.

(e) *Approval of a homeownership program; assistance provided.* (1) When the Commissioner determines that the homeownership program submitted by

the resident council meets the requirements of this section, is financially feasible, and is the least costly alternative that is consistent with establishing a viable homeownership program, the Commissioner shall approve the program.

(2) In connection with an approved homeownership program the Commissioner shall provide grant assistance sufficient to pay the following costs:

(i) The purchase price, which shall not exceed the transfer preservation value;

(ii) Transaction costs, as provided in § 248.157(m)(6);

(iii) Other costs, as provided in § 248.157(m)(7);

(iv) The costs of rehabilitation;

(v) The establishment of an adequate reserve for replacements; and

(vi) If necessary, the establishment of operating reserve escrows including contingencies against unexpected increases in expenses or shortfalls in homeowners' payments.

(3) Upon approval of the homeownership program, the Commissioner and the resident council shall enter into a grant agreement, which shall include, among other matters, procedures governing the drawdown of funds and remedies for noncompliance with the requirements of this section.

(f) *Method of conversion.* The Commissioner whall approve the method for converting the project to homeownership, which may involve acquisition of ownership interests in, or shares representing, the units in a project under any arrangement determined by the Commissioner to be appropriate, such as cooperative ownership, including limited equity cooperative ownership, and fee simple ownership, including condominium ownership.

(g) *Required conditions.* The Commissioner shall require that the form of homeownership impose appropriate conditions, including conditions to assure that—

(1) The number of initial owners that are very low, low, and moderate income persons at initial occupancy are of the same proportion of very low, low, and moderate income tenants (including families and persons whose incomes are 95 percent or more of area median income) as resided in the project on January 1, 1987 or as of the date of approval of the plan of action, whichever date results in the higher proportion of very low income families, except that the resident council may, at its option, increase the proportions of very low income and low initial owners;

(2) Projected debt service payments, occupancy charges and utilities payable by the owners shall not exceed 35 percent of the monthly adjusted gross income of the owners;

(3) The aggregate incomes of initial owners and other sources of funds for the project are sufficient to permit occupancy charges to cover the full operating costs of the project and any debt service; and.

(4) Each initial owner occupies the unit it acquires for at least the initial 15 years of ownership, unless the resident council determines that the initial owner is required to move outside the market area due to a change in employment or an emergency situation.

(h) *Use of proceeds from sales to eligible families.* The entity that transfers ownership interests in, or shares representing, units to eligible families, or another entity specified in the approved application, may use 50 percent of the proceeds, if any, from the initial sale for costs of the homeownership program, including improvements to the project, operating and replacement reserves for the project, additional homeownership opportunities in the project, and other project-related activities approved by the Commissioner. The remaining 50 percent of such proceeds shall be returned to the Commissioner for use under § 248.157 and § 248.161, subject to the availability of appropriations. Such entity shall keep, and make available to the Commissioner, all records necessary to calculate accurately payments due the Commissioner under this paragraph.

(i) *Restrictions on resale by homeowners.* Resale of a homeowner's interest in a project with an approved homeownership program may occur subject to any reasonable restrictions placed on such a transfer by the resident council and approved by the Commissioner.

(1) *Transfer permitted.* A homeowner may transfer the homeowner's ownership interest in the unit, subject to the right to purchase under paragraph (i)(2) of this section, the requirement for the purchaser to execute a promissory note, if required under paragraph (i)(3) of this section and the restrictions on retention of sales proceeds in paragraph (k) of this section. An appicant may propose in its application, and HUD may approve, reasonable restrictions on the resale of units under the program.

(2) *Right to purchase.* Where a resident management corporation, resident council, or cooperative has jurisdiction over the unit, it shall have the right to purchase the ownership interest in the unit from the initial homeowner for the amount specified in a firm contract between the homeowner and a prospective buyer. Where a resident management corporation, resident council, or a cooperative exercises a right to purchase, it shall resell the unit to an eligible family within a reasonable period of time.

(3) *Promissory note required.* At closing, the initial homeowner shall execute a nonrecourse promissory note, in a form acceptable to HUD, equal to the difference between the fair market value of the unit and the purchase price, payable to the Commissioner, together with a mortgage securing the obligation of the note.

(i) With respect to sale by an initial homeowner, the note shall require payment upon sale by the initial homeowner, to the extent proceeds of the sale remain after paying off other outstanding debt incurred in connection with the purchase of the property, paying any other amounts due in connection with the sale, including closing costs and transfer taxes, and paying the family the amount of its equity in the property, computed in accordance with paragraph (k) of this section.

(ii) With respect to a sale by an initial homeowner during the first six years after acquisition, the family may retain only the amount computed under paragraph (k) of this section. Any excess is distributed as provided in paragraph (*l*) of this section.

(iii) With respect to sale by an initial homeowner six to twenty years, after acquisition, the amount payable under the note shall be reduced by 1/168th of the original principal amount of the note for each full month of ownership by the family after the end of the sixth year. The homeowner may retain all other proceeds of the sale.

(j) *Execution of promissory note by subsequent purchaser.* Where a subsequent purchaser during the 20-year period, measured by the term of the initial promissory note, purchases the property for less than the then current fair market value, the purchaser shall also execute at closing such a promissory note and mortgage, for the amount of the discount. The term of the promissory note shall be the period remaining of the original 20-year period. The note shall require payment upon sale by the subsequent homeowner, to the extent proceeds of the sale remain after paying off other outstanding debt incurred in connection with the purchase of the property, and paying any other amounts due in connection with the sale (such as closing costs and transfer taxes). The amount payable on the note shall be reduced by a

percentage of the original principal amount of the note for each full month of ownership by the subsequent homeowner. The percentage shall be computed by determining the percentage of the term of the promissory note that the homeowner has owned the property. The remainder may be retained by the subsequent homeowner selling the property.

(k) *Homeowners' equity.* The amount of equity an initial homeowner has in the property is determined by computing the sum of the following—

(1) The contribution to equity paid by the family, if any, including any down payment and any amount paid towards principal on a mortgage loan during the period of ownership;

(2) The value of any improvements installed at the expense of the family during the family's tenure as owner, as determined by the resident council based on evidence of amounts spent on the improvements, including the cost of material and labor; and

(3) The appreciated value, determined by applying the Consumer Price Index (urban consumers) against the contribution to equity under paragraphs (k)(1) and (2) of this section, excluding the value of any sweat equity or volunteer labor used to make improvements to the unit. The resident council may, at the time of initial sale, enter into an agreement with the family to set a maximum amount which this appreciation may not exceed.

(l) *Use of recaptured funds.* Any net sales proceeds that may not be retained by the homeowner under the homeownership program approved under this section shall be paid to the HOME Investment Trust Fund for the unit of general local government in which the project is located. If the project is located in a unit of general local government that is not a participating jurisdiction, as such term is defined in § 248.101, any such net sales proceeds shall be paid to the HOME Investment Trust Fund for the State in which the project is located. With respect to any proceeds transferred to a HOME Investment Trust Fund under this paragraph, the Commissioner shall take such actions as are necessary to ensure that the proceeds shall be immediately available for eligible activities to expand the supply of affordable housing under section 212 of the Cranston-Gonzalez National Affordable Housing Act of 1990. The Commissioner shall monitor the HOME Investment Trust Fund for each State and unit of local government and shall require maintenance of any records necessary to calculate accurately payments due under this paragraph.

(m) *Protection of nonpurchasing families.* Nonpurchasing families who continue to reside in a project subject to a homeownership program approved under this section shall be protected as follows—

(1) *Eviction.* No tenant residing in an eligible property on the date the Commissioner approves a plan of action may be evicted by reason of a homeownership program approved under this section. This does not preclude evictions for material violation of the terms of occupancy of the unit.

(2) *Section 8 assistance.* If a tenant decides not to purchase a unit, or is not qualified to do so, the Commissioner shall ensure that assistance under parts 882 or 887 of this title is available for use in that or another property by each tenant that meets the eligibility requirements thereunder,.

(3) *Rent increases for ineligible tenants.* Rents for tenants who do not purchase a unit but are ineligible for assistance under paragraph (m)(2) of this section may be increased to a level that does not exceed 30 percent of the tenant's adjusted income or the section 8 existing fair market rent, whichever is lower. Rent increases shall be phased in in accordance with § 248.145(a)6).

(4) *Relocation assistance.* The resident council shall also inform each tenant that if the tenant chooses to move, the resident council, as owner of the project, will pay relocation expenses in accordance with the approved homownership program. The provisions of § 248.165 shall not apply to resident councils who are project owners pursuant to an approved homeownership program under this section.

(n) *Qualified management.* As a condition of approval of a homeownership program under this subpart, the resident council shall have demonstrated its abilities to manage eligible properties by having done so effectively and efficiently for a period of not less than three years or by entering into a contract with a qualified management entity that meets such standards as the Commissioner may prescribe to ensure that the project will be maintained in a decent, safe and sanitary condition.

(o) *Timely homeownership.* The resident council shall acquire ownership of the project no later than 6 months after final approval of a plan of action pursuant to this section. The resident council shall transfer ownership of units in the project (other than units occupied by nonpurchasing tenants) to the tenants within a reasonable time thereafter, but in no event more than 4 years from the date of transfer of the project to the resident council. The Commissioner may seek contractual remedies against any resident council which fails to transfer ownership of all units within the 4-year period. During the interim period when the project continues to be operated and managed as rental housing, the resident council shall utilize written tenant selection policies and criteria that are approved by the Commissioner as consistent with the purpose of providing housing for very low income families. The resident council shall promptly notify in writing any rejected applicant of the grounds for any rejection.

(p) *Housing standards; inspections.* (1) Until the resident council has transferred all units in the project (other than those occupied by nonpurchasing tenants) to the initial purchasers, the project shall be maintained in accordance with the housing standards set forth in § 248.147 of this subpart.

(2) The Commissioner shall inspect the project at least annually in order to determine compliance with paragraph (p)(1).

(q) *Audits.* Each resident council shall be subject to the audit requirements in part 45 of this title and shall submit an annual audit to the Commissioner in such form as the Commissioner may prescribe. The resident council shall keep such records as may be reasonably necessary to fully disclose the amount and the disposition by such resident council of the proceeds of assistance received under this subpart, including any proceeds from sales under paragraphs (h) and (l) of this section, the total cost of the homeownership program in connection with which such assistance is given or used, and the amount and nature of that portion of the program supplied by other sources, and such other sources as will facilitate an effective audit. The Commissioner or his or her duly authorized representative shall have access for the purpose of audit and examination to any books, documents, papers, and records of the resident council that are pertinent to assistance received under this subpart. The Comptroller General of the United States, or any of the duly authorized representatives of the Comptroller General, shall also have access, for the purpose of audit and examination, to any books, documents, papers, and records of the resident council that are pertinent to assistance received under this subpart.

(r) *Reports.* The resident council shall submit reports, as required by the Commissioner, in order to demonstrate continued compliance with the requirements of this section.

(s) *Assumption of the federally assisted mortgage.* The resident council may not assume a mortgage insured, held or assisted by the Commissioner under part 236 of this chapter or under part 221 of this chapter and bearing a below market interest rate as provided under § 221.518(b) of this chapter.

§ 248.177 Delegated responsibility to State agencies.

(a) *In general.* The Commissioner shall delegate some or all responsibility for implementing this subpart to a State housing agency if such agency submits a preservation plan acceptable to the Commissioner.

(b) *Approval.* State preservation plans shall be submitted in such a form and in accordance with such procedures as the Commissioner shall establish. The Commissioner may approve plans that contain—

(1) an inventory of low income housing located within the State that is or will be eligible low income housing under this subpart within five years;

(2) a description of the agency's experience in the area of multifamily financing and restructuring;

(3) a description of the administrative resources that the agency will commit to the processing of plans of action in accordance with this subpart;

(4) a description of the administrative resources that the agency will commit to the monitoring of approved plans of action in accordance with this subpart;

(5) an independent analysis of the performance of the multifamily housing inventory financed or otherwise monitored by the agency;

(6) a certification by the public official responsible for submitting the comprehensive housing affordability strategy under section 105 of the Cranston-Gonzalez National Affordable Housing Act that the proposed activities are consistent with the approved housing strategy of the State within which the eligible low income housing is located; and

(7) such other certifications or information that the Commissioner determines to be necessary to implement an approved State preservation plan, which may include incentives that are authorized under other provisions of this subpart.

(c) *Implementation agreements.* The Commissioner may enter into any agreements necessary to implement an approved State preservation plan, which may include incentives that are authorized under other provisions of this subpart.

§ 248.179 Consultation with other interested parties.

The Commissioner shall confer with any appropriate State or local government agency to confirm any State or local assistance that is available to achieve the purposes of this subpart and shall give consideration to the views of any such agency when making determinations under this subpart. The Commissioner shall also confer with appropriate interested parties that the Commissioner believes could assist in the development of a plan of action that best achieves the purposes of this subpart.

§ 248.181 Notice to tenants.

Except as provided in § 248.105, with respect to the notice of intent, with regard to all provisions of this subpart which mandate that information or material be given to the tenants, by the Commissioner, the owner, or a qualified purchaser, or other party, this requirement shall be satisfied where the notifying entity—

(a) posts a copy of the information or material in readily accessible locations within each affected building, or posts notices in each location describing the information or material and specifying a location, as convenient to the tenants as is reasonably practical, where a copy may be examined and copied during reasonable hours; and

(b) supplies a copy of the information or material to a tenant representative, if any.

Subpart C—Prepayment and Plans of Action under the Emergency Low Income Preservation Act of 1987

13. Section 248.221 would be revised by adding new paragraphs (c) and (d) to read as follows:

§ 248.221 Approval of a plan of action that involves termination of low income affordability restrictions.

* * * * *

(c) There are no open findings of noncompliance with title VI of the Civil Rights Act of 1964; the Fair Housing Act; Executive Order 11063; the Age Discrimination Act of 1975; section 504 of the Rehabilitation Act of 1973; and all regulations promulgated under such statutes and authorities, and no open audit findings with respect to violations of the regulatory agreement.

(d) Any plan of action approved under this section shall specify actions that the Secretary and the owner shall take to ensure that tenants displaced as a result of the termination of low income affordability restrictions are relocated to affordable housing.

14. Section 248.233 would be revised by adding a new paragraph (f) to read as follows:

§ 248.233 Approval of a plan of action that includes incentives.

* * * * *

(f) The Commissioner shall not approve a plan of action under this section if there are open findings of noncompliance with title VI of the Civil Rights Act of 1964; the Fair Housing Act; Executive Order 11063; the Age Discrimination Act of 1975; section 504 of the Rehabilitation Act of 1973; and all regulations promulgated under such statutes and authorities, or if there are open audit findings with respect to violations of the regulatory agreement.

15. Section 248.234(c) would be redesignated as § 248.234(d), and a new § 248.234(c) would be added to read as follows:

§ 248.234 Section 8 rental assistance.

* * * * *

(c) The approved plan of action shall specify actions that the Secretary and the owner shall take to ensure that any tenants displaced as a result of actions taken under paragraph (b) of this section are relocated to affordable housing.

* * * * *

§ 248.235 [Removed]

16. Section 248.235 would be removed in its entirety.

Dated: April 2, 1991.

Jack Kemp,

Secretary.

[FR Doc. 91–10000 Filed 5–1–91; 8:45 am]

BILLING CODE 4210–32–M

federal register

Thursday
May 2, 1991

Part III

Department of Education

34 CFR Part 445

Technology Education Demonstration Program; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 445

RIN 1830-AA07

Technology Education Demonstration Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues regulations governing the Technology Education Demonstration Program. This program is authorized by title VI, subtitle B, chapter 2, of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418). These regulations explain the types of activities the Secretary may support, how to apply for an award, and the basis on which the Secretary would make awards.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Robert L. Miller, Program Improvement Branch, Division of National Programs, Office of Vocational and Adult Education, U.S. Department of Education (Mary E. Switzer Building, room 4512), 400 Maryland Avenue SW., Washington DC 20202–7242. Telephone: (202) 732–2428.

SUPPLEMENTARY INFORMATION: The Omnibus Trade and Competitiveness Act of 1988 (Act) (Pub. L. 100–418) was enacted on August 23, 1988. Title VI, subtitle B, chapter 2 establishes the Technology Education Demonstration Program covered by these regulations. The purpose of the Technology Education Demonstration Program is to assist educational agencies and institutions in developing a technologically literate population through instructional programs in technology education. The Secretary carries out this purpose by providing a discretionary grant program that establishes no more than 10 demonstration projects in technology education for secondary schools, vocational education centers, and community colleges.

Analysis of Comments and Changes

On July 9, 1990, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** (55 FR 28138). In response to the Secretary's invitation in the NPRM, 22 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Definition of Technology Education (Section 445.5)

See discussion under the heading for Priorities (§ 445.20).

Priorities (Section 445.20)

Comments: Several commenters suggested that the definition of "technology education" in § 445.5 be changed to require that programs "be conducted by certified technology education teachers in a laboratory setting using the tools, materials, and equipment related to the areas of communication, construction, manufacturing, and transportation." These commenters also wanted the definition to clarify that "technology education is distinctly different from areas such as educational technology or those programs primarily in the field of science education."

Discussion: The definition of technology education" is the same as the definition in the authorizing statute. The Secretary believes that Congress did not intend to limit the definition either to (1) activities conducted by certified technology teachers in laboratory settings or (2) activities that exclude instruction in education technology or science education. These proposed changes would restrict or preclude some of the authorized activities listed in section 6112(b)(2) of the Act (§ 445.3), such as educating students in the use of tools and machines (§ 445.3(d)) or the integration of mathematics, science, and technology education (§ 445.3(k)). The Secretary agrees, however, that technology education under this program is not intended to focus on using technologically advanced equipment as a means of instruction or to provide assistance for projects advanced equipment as a means of instruction or to provide assistance for projects offering associate degree or college level instruction focusing primarily on the sciences.

The Secretary believes also that limiting the definition of technology education to the areas of communication, construction, manufacturing, and transportation would be overly restrictive. However, the commenters' recommendations and the types of applications received during the 1990 competition for grants under this program suggest that additional guidance on the kinds of activities authorized under this program may be helpful. In addition, the Secretary is aware that the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990 (Pub. L. 101–392) contains a slightly different definition of technology education

Change: The Secretary has not changed the definition of technology education. However, the Secretary has added a new paragraph (d) to § 445.20 to provide guidance on the instructional areas covered under the program. The new paragraph takes into account both the commenter's suggestions and portions of the Perkins Act definition, by allowing the Secretary to give priority in awarding grants to applications for projects that address one or more of the areas of communication, construction, manufacturing, transportation, power, and energy.

Selection Criterion—Educational Significance (Section 445.22(a))

Comment: Several commenters suggested that the title for the criterion "educational significance" be changed to "Meeting the purpose of the Act." Commenters wanted 30 points rather than 15 points assigned to the criterion. Commenters also suggested that a new criterion—"Extent of need for the proposed project"—be added and 20 points be assigned to that criterion.

Discussion: The purpose of this criterion is to evaluate whether an applicant is proposing to demonstrate an effective model. The Secretary is searching for projects that will demonstrate some significant aspect of technology education, or that have been recognized as effective and, if demonstrated at the national level, would be replicable and helpful to others in technology education. The Secretary believes that the title of "educational significance" for the criterion more accurately reflects this purpose. The Secretary believes further that a separate criterion limited to need is unnecessary because the extent of need for the project is implicit in the very nature of the types of projects sought under this program.

Change: None.

Selection Criterion—Project Objectives (Section 445.22(b))

Comments: Several commenters suggested that the Secretary review applications to determine the extent to which project objectives "are appropriate for the achievement of the purpose of the Technology Education Demonstration Program" rather than to determine the extent to which project objectives "relate to the purpose of the program."

Discussion: The Secretary agrees that the suggested language conveys better the intent of the criterion.

Change: Section 445.22(b)(1) has been changed to reflect the comment.

Use of Funds for Equipment (Section 445.24)

Comment: One commenter suggested that any restrictions placed on the amount of funds that can be used for equipment be given careful thought because most technology education programs involve equipment. The commenter recommended that applicants be allowed to determine the amount of funds to be used for the purchase of equipment according to project goals and objectives.

Discussion: Equipment costs for technology education programs could consume a sizeable portion of the limited Federal funds available under this program, and it appears that Congress intended for the Federal funds to be used for educational activities. For this reason, the Secretary may choose to limit the percentage of Federal funds that may be used for equipment. The 35 percent non-Federal share of the costs of a project may be used without limitation for equipment purchases, if applicants so desire.

Change: Section 445.24 has been changed to clarify that the restriction on equipment purchases applies only to Federal funds.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations would not have a significant economic impact on a substantial number of small entities. To the extent that these regulations have an impact on small entities, they respect statutory requirements.

The selection criteria for applications reviewed under this program require the minimum amount of information necessary for a fair appraisal of the activities proposed by applicants in order to ensure the funding of high quality projects.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 445

Colleges and universities, Community colleges, Education, Equal employment opportunity, Grant programs, Reporting and recordkeeping requirements, Schools, Secondary education, Technology, and Vocational education.

(Catalog of Federal Domestic Assistance Number 84.230, Technology Education Demonstration Program)

Dated: April 4, 1991.

Lamar Alexander,

Secretary of Education.

The Secretary amends title 34, chapter IV, of the Code of Federal Regulations by adding a new part 445 to read as follows:

PART 445—TECHNOLOGY EDUCATION DEMONSTRATION PROGRAM

Subpart A—General

Sec.

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

Subpart D—What Conditions Must Be Met after an Award?

Authority: 20 U.S.C. 5101 through 5106, unless otherwise noted.

Subpart A—General

§ 445.1 What is the Technology Education Demonstration Program?

The purpose of the Technology Education Demonstration Program is to provide assistance in the development of a technologically literate population through instructional programs in technology education. The Secretary implements this purpose by providing assistance for no more than ten demonstration projects to develop model programs for technology education for secondary schools, vocational educational centers, and community colleges.

(Authority: 20 U.S.C. 5101 and 5102)

§ 445.2 Who is eligible for an award?

Local educational agencies; State educational agencies; consortia of public and private agencies, organizations, and institutions; and institutions of higher education are eligible for a direct grant under this program.

Cross-Reference: See 34 CFR 75.127 through 75.129, Group Applications.

(Authority: 20 U.S.C. 5102)

§ 445.3 What activities may the Secretary fund?

The Secretary provides grants for projects to develop model programs for technology education that, to the extent practicable, address the following components:

(a) Educational course content based on—

(1) An organized set of concepts, processes, and systems that is uniquely technological and relevant to the changing needs of the workplace; and

(2) Fundamental knowledge about the development of technology and its effect on people, the environment, and culture.

(b) Instructional content drawn from the introduction to technology education courses in one or more of the following areas:

(1) Communication—efficiently using resources to transfer information to extend human potential.

(2) Construction—efficiently using resources to build structures on a site.

(3) Manufacturing—efficiently using resources to extract and convert raw or recycled materials into industrial and consumer goods.

(4) Transportation—efficiently using resources to obtain time and place utility and to attain and maintain direct physical contact and exchange among individuals and societal units through movement of materials, goods, and people.

(c) Assisting students in developing insight, understanding, and application of technological concepts, processes, and systems.

(d) Educating students in the safe and efficient use of tools, materials, machines, processes, and technical concepts.

(e) Developing student skills, creative abilities, confidence, and individual potential in using technology.

(f) Developing student problem-solving and decision-making abilities involving technological systems.

(g) Preparing students for lifelong learning in a technological society.

(h) Activity oriented laboratory instruction that reinforces abstract concepts with concrete experiences.

(i) An institute for the purpose of developing teacher capability in the area of technology education.

(j) Research and development of curriculum materials for use in technology education programs.

(k) Multidisciplinary teacher workshops for the integration of mathematics, science, and technology education.

(l) Employment of a curriculum specialist to provide technical assistance for the program.

(m) Stressing basic remedial skills in conjunction with training and automation literacy, robotics, computer-aided design, and other areas of computer-integrated manufacturing technology.

(n) A combined emphasis on "know-how" and the "ability-to-do" in carrying out technological work.

(Authority: 20 U.S.C. 5102(b))

§ 445.4 What regulations apply?

The following regulations apply to the Technology Education Demonstration Program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR Part 75 (Direct Grant Programs).

(3) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR Part 81 (General Education Provisions Act—Enforcement).

(7) 34 CFR Part 82 (New Restrictions on Lobbying).

(8) 34 CFR Part 85 (Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)).

(9) 34 CFR Part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this Part 445.

(Authority: 20 U.S.C. 5101 through 5106)

§ 445.5 What definitions apply?

(a) *Definition in the Act.* The following term used in this part is defined in section 6116 of the Act:

Technology education means a comprehensive educational process designed to develop a population that is knowledgeable about technology, its evolution, systems, techniques, utilization in industry and other fields, and social and cultural significance.

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget
EDGAR
Grant
Grantee
Private
Project
Public
Secondary school
Secretary
Subgrant
State
State educational agency

(c) *Other definitions.* The following definitions also apply to this part:

Act means Title VI, subtitle B, chapter 2 of Public Law 100–418, the Omnibus Trade and Competitiveness Act of 1988 (20 U.S.C. 5101 through 5106).

Institution of Higher Education has the same meaning given to that term in section 1201(a) of the Higher Education Act of 1965.

Local educational agency has the same meaning given to that term in 34 CFR 77.1(c) and includes any other public educational institution or agency having administrative control and direction of a vocational education program.

(Authority: 20 U.S.C. 5101 through 5106)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 445.20 What priorities may the Secretary establish?

(a) The Secretary may announce through one or more notices published in the **Federal Register** the priorities for this program, if any, selected from the list of priorities described in paragraphs (b), (c) and (d) of this section.

(b) To the extent feasible, priority is given to demonstration projects that develop model programs that address the largest number of components listed in paragraphs (a) through (k) of § 445.3.

(c) Priority may be given to projects that address one or more of the components listed in § 445.3.

(d) Priority may also be given to projects that address one or more of the areas of communication, construction, manufacturing, transportation, power, and energy.

(Authority: 20 U.S.C. 5102)

§ 445.21 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant on the basis of the criteria in § 445.22.

(b) The Secretary may award up to 100 points, including a reserved 10 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 445.22.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition as announced in a notice published in the Federal Register, the Secretary may assign the reserved 10 points among the criteria in § 445.22.

(Authority: 20 U.S.C. 5103)

§ 445.22 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria to evaluate an application:

(a) *Educational significance of the proposed demonstration project.* (15 points) The Secretary reviews each application to determine how well it meets the purposes of the Technology Education Demonstration Program, including—

(1) A clear description of what the proposed project intends to demonstrate;

(2) A clear description of how the proposed project will improve programs in technology education and will promote the development of a technologically literate population; and

(3)(i) If the proposed project will demonstrate an existing model, empirical data that shows the effectiveness of the proposed model; or

(ii) If the proposed project will demonstrate a new model, a clear description of how the proposed model could be adapted in other educational settings.

(b) *Project objectives.* (10 points) The Secretary reviews each application to determine the extent to which the project objectives—

(1) Are appropriate for the achievement of the purpose of the Technology Education Demonstration Program; and

(2) Are attainable and measurable.

(c) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the proposed project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management is effective, ensures proper and efficient administration of the project, and includes timelines that show starting and ending dates for all tasks, activities, and significant events;

(3) Specific procedures that clearly describe how the project's objectives will be accomplished;

(4) The way the applicant plans to use its resources and personnel to achieve each objective;

(5) A clear description of the manner in which project activities will be coordinated, to the extent practicable, with programs under the Job Training Partnership Act, the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990; and other Acts related to the purposes of the Technology Education Demonstration Program; and

(6) If the proposed project will provide instruction to students, a description of how the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(d) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the proposed project, including—

(i) The qualifications and experience of the project director;

(ii) The documentation of the project director's availability at the start of the project and a time commitment to the project of at least fifty percent;

(iii) The qualifications and experience of each of the other key personnel to be used on the project;

(iv) The time that each person referred to in paragraphs (d)(1) (i) and (iii) of this section will commit to the project; and

(v) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications under paragraphs (d)(1) (i) and (iii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the project.

(e) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The proposed expenditures for each budget category are justified in a budget narrative; and

(2) Costs are necessary and reasonable, and budget category totals are itemized.

(f) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the plan—

(1) Includes specific procedures for—

(i) A formative evaluation to help guide and improve the project; and

(ii) A summative evaluation;

(2) Includes a description of the quantifiable data to be collected based on the project objectives, including, as appropriate, information on—

(i) The demographic characteristics of individual participants and the schools they attend;

(ii) The services provided to participants, including information on duration, intensity, and costs;

(iii) The characteristics, background, and training of staff used in the project; and

(iv) The implementation of the project, including any obstacles to implementation and how those obstacles were overcome;

(3) Specifies the procedures to be used in data collection, including the frequency with which data will be collected;

(4) Describes how the data will be analyzed, including the statistical techniques to be used; and

(5) Describes how achievement of project objectives will be measured, including the empirical measures that will be used to measure progress toward each of the stated project objectives.

(g) *Dissemination plan.* (10 points) The Secretary reviews each application to determine the quality of the dissemination plan for the project, including—

(1) A description of the materials, product(s), packages, or handbooks the applicant plans to make available;

(2) A clear description of the dissemination procedures; and

(3) Provisions for publicizing the findings of the project at the local, State, and national levels, as appropriate.

(Approved under OMB Control No. 1830-0511)

(Authority: 20 U.S.C. 5103)

§ 445.23 What additional factors does the Secretary consider?

In addition to the criteria in § 445.22—

(a) The Secretary considers whether funding a particular applicant would contribute to the equitable geographical distribution of projects funded under this program; and

(b) The Secretary may consider whether funding a particular applicant would contribute to the funding of a variety of approaches to technology education.

(Authority: 20 U.S.C. 5103(c))

§ 445.24 May the Secretary restrict the use of funds for equipment?

The Secretary may restrict the amount of Federal funds made available for equipment purchases to a certain percentage of the total grant for a project. The Secretary may announce, through a notice published in the Federal Register, the percentage of

Federal project funds that may be used for the purchase of equipment.

(Authority: 20 U.S.C. 5101 through 5106)

Subpart D—What Conditions Must Be Met after an Award?

§ 445.30 What are the cost sharing requirements?

(a) The Federal share of the total cost for a technology education demonstration project may not exceed 65 percent of the total cost of the project.

(b) At least ten percent of the total cost of the project must be provided from contributions from the private sector.

(c) Non-Federal contributions may be in cash or fairly valued in-kind contributions, including facilities, overhead, personnel, and equipment.

Cross-Reference: See 34 CFR Part 74, Subpart G—Cost Sharing or Matching and 34 CFR 80.24.

(Authority: 20 U.S.C. 5102(c))

§ 445.31 What other requirements must be met under this program?

(a) Grantees shall ensure that Federal funds made available under this program are used to supplement and, to the extent practicable, increase the amount of State and local funds that would in the absence of those Federal funds be made available for the uses specified in this program, and in no case supplant those State or local funds.

(b) Grantees shall make reports in the form and containing the information the Secretary may require, including—

(1) A final report; and

(2) A handbook that describes the procedures others may follow to replicate the project.

(c) Grantees shall ensure that any products or evaluation reports produced by their projects are in a form that can be disseminated to benefit the training of teachers, other instructional personnel, counselors, and administrators.

(Approved under OMB Control No. 1830–0511)

(Authority: 20 U.S.C. 5103(b) and 5104)

[FR Doc. 91–10210 Filed 5–1–91; 8:45 am]

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federal register

Thursday
May 2, 1991

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary

Funding Availability for Technical Assistance Awards for the Development of Community Energy Systems Based on District Heating and Cooling; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-91-3249; FR-2941-N-01]

Funding Availability for Technical Assistance Awards for the Development of Community Energy Systems Based on District Heating and Cooling

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Funding Availability (NOFA) for FY 1991.

SUMMARY: This NOFA announces HUD's funding for technical assistance awards for the development of community energy systems based on district heating and cooling. In the body of this document is information concerning the purpose of the NOFA, and information regarding eligibility, available amounts, selection criteria and application processing, including how to apply and how selections will be made.

DATES: The actual Application Due Date will be specified in the application kit. Applicants will have at least 30 days to prepare and submit their proposals. The 30-day (or more) response period shall begin to run from the first date upon which applications are made available.

FOR FURTHER INFORMATION CONTACT: Samuel A. Jones, Program Support Division, Office of Procurement and Contracts, room 5256, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410, telephone (202) 708-1162. (This is not a toll free number.) Application Kits will be sent only upon written request to the Office of Procurement and Contracts at the above address. Telephone requests for Application Kits will not be accepted.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The control number for information collection described in this document is 2535-0084.

I. Purpose and Substantive Description

A. Authority

The authority for this assistance is the Technical Assistance program under section 107 of title I of the Housing and Community Development Act of 1974, implemented by the Department's regulations at 24 CFR 570.400 and 570.402.

B. Allocation Amounts and Forms of Award

A total of $578,000 is available for the awards resulting from this competition. Technically, these grant awards will be made in the form of cooperative agreements. The applicants will compete in three categories:

(1) Initial feasibility studies for new systems;

(2) Design, marketing, and financial/ownership packaging for systems previously determined to be technically and financially feasible; and

(3) Major expansions of existing systems that require either or both of the previous two categories of work.

Half of the funds available will be allocated to category 2 and the remainder will be equally divided between categories 1 and 3. To the extent funds in any category are not used, they will be allocated to other categories. Total project costs in category 1 are expected to range between $35,000 and $75,000, with up to two-thirds to come from this award and at least one-third of the total to come from a non-federal cash contribution. Total project costs in category 2 are expected to range between $100,000 and $300,000 with up to one-half to come from this award and at least one-half of the total to come from a non-federal cash contribution. Total project costs in category 3 are estimated to range between $100,000 and $300,000 with up to one-third to come from this award and at least two-thirds of the total to come from a non-federal cash contribution.

Applications will be ranked and selected in turn from categories 2, 3, and 1 using the selection criteria explained below in section IV. Each award will be made in the form of a cooperative agreement. Specific work activities and project budgets will be negotiated at the time of the award. Each award will be subject to the requirements of 24 CFR 570.400 and 24 CFR 570.402, subparts A, C, J, K, and O.

C. Description of Technical Assistance Competition

1. Purpose and Background

The purpose of the competition announced by this NOFA is to aid communities in developing community energy systems based on district heating and cooling, thereby reducing energy costs to commerce and industry, making housing more affordable, and reducing dependence on imported fuels.

Community energy systems based on district heating and cooling use a network of underground piping to deliver chilled water, hot water or steam from a central plant to whole districts of residential, commercial and industrial buildings, or to a small number of large users, at lower cost. Important cost savings result from using heat that is thrown off as waste or as a by-product of local power companies or factories. Small systems, delivering excess energy from one factory or plant to nearby office buildings, industries or residences also can be cost effective in meeting heating and cooling needs. When based on cogeneration (a process that uses the same energy sequentially—first to make electricity and then to heat buildings) these systems achieve maximum fuel-use efficiency and have a positive effect on economic development projects supported with CDBG funds by reducing the costs of energy to business and residential users.

Grantees will be expected to supplement the funds received with other funds for use in determining the technical and financial feasibility of developing a system, or in conducting the engineering, design, marketing, and financial packaging that make up the later stages of a development process for a feasible system eligible for construction with assistance under the CDBG program. "Development process" or "development phase" as used in this Notice means all of those activities leading up to, but not including, the construction of a system that will involve CDBG funds.

The development process can be divided into three broad categories of activities. The first category deals with technical and financial assessment of new, plausible, candidate CES/DHC projects in a community. A number of communities completed such feasibility assessments with HUD assistance in the past with positive results, but put viable projects on hold when fuel prices dropped dramatically in 1986.

Another category deals with the design, marketing, financial and ownership packaging of the best of the plausible configurations for new systems developed in the assessment phase.

A third category deals with the design, marketing, and financial packaging of a major expansion as part of a rejuvenation effort for an existing system.

HUD believes it is helpful to the development of more fuel-saving, energy-efficient CES/DHC systems in

the country to stimulate high-quality examples in each of these three categories of development activity. HUD is putting more emphasis on the category leading directly to construction in order to have more new operating examples for other communities to use as models for independent efforts.

HUD will have teams of nationally-recognized experts available to work with recipients of the awards resulting from this competition. These teams will provide short-duration, highly specialized technical assistance to communities on the more complex analytical and institutional problems common to all of the projects but particularly those engaged in the initial technical and financial feasibility determination category. This assistance will be individually tailored to complement the capabilities of consulting firms hired by the communities. It is intended that the teams will have at their disposal such tools as HEATPLAN, HEATMAP and environmental impact computer models that can be used in screening the community to identify candidate system configurations.

2. Eligibility

Eligible applicants are cities, counties, States, and non-profit and for-profit organizations with the technical capability of conducting energy feasibility studies and developmental work on community energy systems based on district heating and cooling that are eligible for assistance under the Community Development Block Grant (CDBG) program.

The grants will assist two types of efforts: (1) Feasibility studies for communities at the beginning stages of considering community-wide or district-wide energy systems; (2) development activities for communities for which feasibility of district heating and cooling systems has been demonstrated. Construction costs are not eligible for assistance under this Notice.

Depending on the stage of development of a particular project, eligible activities may include: conducting a market analysis, analyzing potential thermal energy sources, conducting a cost-benefit assessment of competing systems, completing financial and ownership analyses, conducting anchor-customer retrofit cost analysis, appraising local environmental problems arising from heating and cooling, and completing an energy-environment-development strategy for the community that is based on district heating and cooling. Other appropriate projects may be included.

3. Selection Criteria/Ranking Factors

The following criteria will be used by the Department to evaluate applications. Each application must contain sufficient technical information to be reviewed for its technical merit.

The score on each criterion will be based on the qualitative and quantitative aspects demonstrated in each area of the response. The criteria and corresponding maximum number of points for each (out of a total of 100 points) are as follows:

1. Probable effectiveness of the proposal in meeting needs of localities and accomplishing overall project objectives;

(a) The extent to which the membership of a Steering Committee represents potential suppliers, customers, and other groups and institutions that could be affected by (or influence the community's acceptance of) the system is specified and appropriate individuals are invited to serve (15);

(b) The percentage of total project costs, above the minimum non-Federal cash contribution required for each category, to be funded from sources other than this grant (10).

2. Soundness of approach based on the extent to which applications identify techniques or systems that can significantly impact on the key problem(s) identified;

(a) Knowledge of one or more specific, existing local opportunities for a DHC system as evidenced, for example, by a preliminary report from an energy specialist (15);

(b) Completeness and quality of the scope of work, and schedule for performance (10).

3. Methodology for transfer of successful technical assistance techniques to other potential assistance providers;

(a) Expressed commitment to be available to provide technical assistance to other communities and the time period for that commitment (10).

(4) Organizational and management plan reflecting a rational project management system;

(a) Completeness and quality of the schedule for performance, and work management plan (10);

(b) Reporting level of the project within the city organization (5).

(5) Application qualifications based on present and past relevant experience and the competence of key personnel assigned in the project;

(a) The extent to which the quality and experience of designated staff and consultant team demonstrate an *assembled* capability for assessing and developing DHC (15).

(6) Potential for assistance activities being sustained beyond the period of the grant;

(a) Local commitment evidenced by the people and financial resources committed to the project (5);

(b) The extent to which the applicant demonstrates a capacity for continuing with CES/DHC activities once the assessment is completed (5).

II. Application Process

A. Obtaining and Submitting Applications

An Application Kit may be obtained from Samuel A. Jones, Program Support Division, Office of Procurement and Contracts, room 5256, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410, telephone (202) 708–1162. (This is not a toll free number.) Application Kits will be sent only upon written request to the Office of Procurement and Contracts at the above address. Telephone requests for Application Kits will not be accepted.

B. Submission Deadline

Applications will be due no earlier than 30 days from the date of publication of this NOFA. The actual date and place for receipt of applications will be specified in the Application Kit.

III. Checklist of Application Submission Requirements

A. Application Contents: Certifications and Disclosures

1. Commitment of Cash Match

Each applicant must submit a letter of commitment, signed by an official authorized to make such a commitment, for each source of local cash contribution.

2. Certification of CDBG Funds

Where an applicant elects to use CDBG funds as all or part of the local cash contribution, the application must include a certification by the chief executive officer or legally designated official of the local or state government responsible for the allocation of CDBG funds that such funds, in the amount to be contributed, will be made available. Those applicants intending to contribute CDBG funds should recognize that costs related to a specific activity under 24 CFR 570.201–570–204 are subject to all requirements of the CDBG programs, and such applicants need to start the process of obtaining the allocation of CDBG funds as quickly as possible.

Additionally, all applicants must include a letter of commitment or expression of intent from the chief executive officer or legally designated official of the State or local government responsible for the allocation of CDBG funds for the construction of a feasible district heating and cooling system with CDBG assistance.

Applicants that are non-profit or for-profit organizations must also submit a letter from the chief executive officer of the local or State government designating the applicant as a technical assistance provider for the purpose of assisting the government in the planning, development or administration of its CDBG activities for which the technical assistance under this Notice is to be provided.

Failure to submit the required certifications and letters of commitment and designation with the application or within 30 days following the application submission deadline will eliminate the applicant from further consideration for a grant. The inclusion of other public and private funds is encouraged. Considering the lead times involved in obtaining firm commitments of funds from whatever sources, the applicant is urged to start the process at the earliest possible date.

3. Certification Regarding Lobbying

On February 26, 1990, at 55 FR 6736, the Department joined in the issuance of a government-wide interim rule advising recipients and subrecipients of Federal contracts, grants, cooperative agreements and loans of a new prohibition regarding the use of appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. In general, this rule prohibits the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. In addition, the recipient must also file a disclosure if it has made or has agreed to make any payment with nonappropriated funds that would be prohibited if paid with appropriated funds. Potential grantees should refer to the government-wide rule for the language for the certification and disclosure. As indicated in this certification and disclosure, the law provides substantial monetary penalties for failure to file the required certification or disclosure.

4. Certification of Drug-Free Workplace

The Drug-Free Workplace Act of 1988 requires grantees of Federal agencies to certify that they will provide drug-free workplaces. Thus, each potential grantee must certify that it will comply with drug-free workplace requirements in accordance with 24 CFR part 24, subpart F.

5. Certification Prohibiting Excessive Force

Section 906 of the National Affordable Housing Act prohibits CDBG funds from being obligated or expended to any unit of general local government that (1) fails to adopt and enforce a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations, or (2) fails to adopt and enforce a policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstration within its jurisdiction. Accordingly, affected applicants are required to provide a certification of compliance with this provision.

IV. Corrections to Deficient Applications

After the deadline for submission of applications, applications will be screened to determine whether all items were submitted. If the applicant fails to submit certain technical items, or the application contains a technical mistake, such as an incorrect signatory, HUD will notify the applicant in writing that the applicant has 14 calendar days from the date of the written notification to submit the missing item, or correct the technical mistake. If the applicant does not submit the missing item within the required time period, the application will be ineligible for further processing.

The 14 day cure period pertains only to nonsubstantive technical deficiencies or errors. Any deficiency capable of being cured will involve only an item that is not necessary for the Department's ability to assess the merits of an application under the ranking factors set forth in this NOFA.

V. Other Matters

A. Environmental Impact

In accordance with 40 CFR 1508.4 of the CEQ regulations and 24 CFR 50.20(b) of the HUD regulations, the policies and procedures in this document relate only to the provision of technical assistance and therefore are categorically excluded from NEPA requirements.

B. Federalism Impact

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that the policies contained in this Notice will not have federalism implications and, thus, are not subject to review under the Order. The promotion of new and alternative energy systems is a program of general benefit without direct implications on the relationship between the national government and the states or on the distribution of power and responsibilities among various levels of government.

C. Family Impact

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that the policies announced in this Notice would not have a significant impact on the formation, maintenance, and general well-being of families except indirectly to the extent of the economic and other benefits expected to flow eventually from the types of energy systems promoted by this program of assistance.

This program is listed in the catalog of Federal Domestic Assistance under program number 14.227, Community Development Block Grants/Special Purpose Grants/Technical Assistance Program.

Authority: Sec. 107, Housing and Community Development Act, as amended, and 24 CFR 570.400 and 570.402.

Dated: April 23, 1991.

Anna Kondratas,

Assistant Secretary for Community Planning and Development.

[FR Doc. 91-10399 Filed 5-1-91; 8:45 am]

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May 2, 1991

Part V

Department of Defense

Mentor-Protege Pilot Program; Notice

48 CFR Parts 219 and 252
Small Business and Small Disadvantaged Business Concerns; Proposed Rule

DEPARTMENT OF DEFENSE

Mentor-Protege Pilot Program;

AGENCY: Department of Defense (DoD).

ACTION: Notice of Pilot Program.

SUMMARY: The Department of Defense (DoD) is inviting public comments on its proposed implementation of the Mentor-Protege Pilot Program. The Pilot program will permit selected contractors to provide developmental assistance to small disadvantaged businesses (SDBs) for which DoD may provide cost reimbursement, credit against SDB subcontracting goals or both. The DoD policy sets forth the comprehensive implementation plan for the program and the proposed DFARs coverage provides guidance on contracting officer's responsibilities under the program. The public is invited to comment on both the policy and the proposed DFARS coverage. Comments must be submitted separately for the policy and the DFARS language.

DATES: Comments concerning the policy and the DFARs coverage must be received on or before June 3, 1991, to be considered in finalizing the program. Please cite DAR Case 90–314 in all correspondence related to this issue.

ADDRESSES: Interested parties should submit written comments on the policy to OUSD(A), OSDBU, room 2A340, The Pentagon, Washington, DC 20301–3061, attn: Ms. Tracey Pinson.

FOR FURTHER INFORMATION CONTACT: Tracey Pinson, telephone (703) 697–1688.

SUPPLEMENTARY INFORMATION:

Background

Section 831 of Public Law 101–510 as amended establishes the Mentor-Protege Pilot Program. The purpose of the Program is to provide incentives for major DoD contractors to furnish SDBs with assistance designed to enhance their capabilities to perform as subcontractors and suppliers under DoD contracts and other contracts, in order to increase the participation of the concerns as subcontractors and suppliers under DoD contracts, other Federal Government contracts, and commercial contracts. Incentives for major DoD contractors to provide developmental assistance to SDBs consist of cost reimbursement, credit against SDB subcontracting goals established under DoD contracts or both.

The Mentor-Protege Pilot Program is a test program that will be limited in number of participants so that the concept can be properly tested. Implementation of the program will involve detailed administrative requirements for both DoD and prospective mentor firms. Once funds are available for the Program, DoD will solicit participation in the Program. Companies that are interested in becoming mentors will have 60 days to submit their mentor-protege documents to the Office of Small and Disadvantaged Business, Office of the Under Secretary of Defense (Acquisition). The mentor-protege documents must include: A request to become a mentor, a signed mentor-protege agreement, the proposed costs of the developmental assistance to be provided the protege firm, and an advance agreement proposal on the treatment of developmental assistance costs. The package must be complete and in accordance with the DoD policy. Documents will not be received or considered after the designated closing period. Once all requests for program participation have been received, OSDBU will review all submitted documents except the advance agreement. Subsequent to approval of these documents, OSDBU will send them to the cognizant contracting officer to negotiate the advance agreement with the mentor firm. The mentor firm will be notified by OSDBU that the documents have been approved with the exception of the advance agreement and to proceed to negotiate the advance agreement with the contracting officer. The decision of participation under the program is not final until the advance agreement has been negotiated and approved by the contracting officer. Once the contracting officer has approved the advance agreement, the mentor firm may implement the developmental assistance program in accordance with the approved mentor-protege agreement and advance agreement.

The DoD policy sets forth the information that must be submitted in order for companies to participate in the Program as mentor firms. Companies that are interested in becoming mentor firms will be responsible for the selection of SDBs proteges. DoD will not be involved in the selection of proteges, however, SDBs chosen as proteges by the prospective mentor firm must meet the eligibility criteria set forth in the DoD policy.

The proposed DoD policy on the Mentor-Protege Pilot Program is as follows:

DOD Policy for Implementation of the Mentor Protege Pilot Program

I. Purpose

This policy implements the Mentor-Protege Pilot Program (hereinafter referred to as the "Program") established under section 831 of Public Law 101–510 as amended, The National Defense Authorization Act for Fiscal Year 1991. The purpose of the Program is to:

(1) Provide incentives to major DoD contractors performing under subcontracting plans negotiated under DoD contracts to voluntarily assist small disadvantaged businesses (SDBs) in enhancing their capabilities to satisfy DoD contract and subcontract requirements;

(2) Foster the establishment of long term business relationships between SDBs and major defense contractors and;

(3) Increase the overall participation of SDBs as subcontractors and suppliers under DoD contracts, other Federal government contracts and commercial contracts.

Under the Program, eligible defense contractors will enter into mentor-protege agreements with eligible SDBs as protege firms to provide appropriate developmental assistance to enhance the capabilities of SDBs to perform as subcontractors and suppliers. The Department of Defense will, subsequent to an application and approval process, provide the mentor firm with either cost reimbursement, credit against SDB subcontracting goals established under DoD contracts or both.

II. Procedures

The application process generally consists of the submission of mentor-protege documents that include: A request to become a mentor firm, a signed mentor-protege agreement(s), the proposed costs of the developmental assistance to be provided to the protege firm(s) under the Program and an advance agreement proposal on the treatment of developmental assistance costs. The Office of Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense for Acquisition OUSD(A) (hereinafter referred to as OSADBU) will have the responsibility for approving: Requests to become a mentor firm, the mentor-protege agreement(s) and the funding level if appropriate. Upon receipt of the approved documents from OSADBU, the appropriate contracting officer will have the responsibility for negotiating and approving the advance agreement and modifying contracts accordingly.

Mentor-protege documents submitted to OSADBU will generally be evaluated on the extent to which the mentor's Program addresses the following:

(1) Intent to increase the number and dollar value of subcontracts awarded by the mentor firm to protege firms under DoD contracts, contracts awarded by other Federal Agencies and commercial contracts;

(2) Intent to concentrate on the development of the protege firm(s) on a single major system(s), a service or supply program, research and development programs, initial production or mature systems or in the total contract base;

(3) The extent to which emerging SDBs are identified as protege firms;

(4) Extent to which the mentor's developmental assistance program for the protege firm will result in an increase in subcontracting to the protege firm in industry categories where SDBs have not traditionally participated;

(5) Ideas that will be explored to ensure that the protege firm(s) remain or become competitive and not unduly reliant on the mentor firm in the long term.

III. Program Duration

Activities under the Program will occur during the following periods:

(1) Approval of companies to participate in the Program until September 30, 1994;

(2) Performance under a mentor-protege agreement, only if such agreement was approved and executed by the mentor firm and its protege firm prior to October 1, 1994;

(3) Reimbursement of mentor firms for costs of providing developmental assistance to its protege firms, only if such costs are incurred after the approval of the advance agreement and prior to October 1, 1996;

(4) Accord credit to a mentor firm toward the attainment of such firm's goals for subcontract awards to SDBs for costs of providing developmental assistance to its protege firms, only if such costs are incurred after approval of the advance agreement and prior to October 1, 1999.

IV. Eligibility Requirements for a Protege Firm

A. A company may qualify as a protege firm if it is:

(1) A business concern as defined by section 8(d)(3)(C) of the Small Business Act.

(2) Not suspended, debarred or otherwise ineligible for the award of a government contract.

(3) A small business according to the SBA size standard in the Standard Industrial Code (SIC) which represents the contemplated supplies or services to be provided by the protege firm to the mentor firm.

B. A protege firm may self-certify to a mentor firm that meets the eligibility requirements in A (1), (2) and (3) above. Mentor firms may rely in good faith on this representation.

C. Protege firms may only have one active mentor-protege agreement.

V. Selection of Protege Firms

A. Mentor firms will be responsible for selecting protege firms. If the mentor firm intends to submit to OSADBU more than one mentor-protege agreement, mentor firms shall select a number of protege firms that are defined as emerging equal to those that are in more advanced phases of business development.

B. The selection of protege firms by mentor firms may not be protested by interested SDBs. SDBs may only protest the size and disadvantaged status of selected protege firms in accordance with (C) below.

C. In the event of a protest by an interested SDB regarding the size or disadvantaged eligibility of another SDB to be a protege firm, the mentor firm shall refer the protest to the SBA to resolve in accordance with 13 CFR 124.601.

VI. Approval Process for Mentor Firms, Mentor-Protege Agreements, Funding and Advance Agreements

A. Prospective mentor firms are required to submit to OSADBU the following mentor-protege documents:

(1) A request for approval as a mentor firm;

(2) A signed mentor-protege agreement(s);

(3) The proposed costs of the developmental assistance to be provided to the protege firm(s) under the Program (costs must be broken out per year by mentor-protege agreement.) Prior to submitting a proposed cost proposal the prospective mentor firm shall coordinate with the cognizant PCO to ascertain whether funding is available to support their mentor-protege agreement. Indicate the maximum amount that will be funded by the PCO.

(4) An advance agreement proposal on the treatment of developmental costs.

B. Companies shall submit four copies of the mentor-protege documents specified in A (1), (2), (3), and (4) above to: OUSD(A) OSADBU, room 2A340, The Pentagon, Washington, DC 20301–3061, Attn: Mentor-Protege Program. OSADBU will review items (1), (2), and (3) and if approved, will notify the company to proceed with the negotiation of the advance agreement with the appropriate contracting officer. Authorization for firms to negotiate an advance agreement is a preliminary process and in no way obligates the government to provide reimbursement or credit to the approved mentor firm under the Program.

C. The decision on companies participating in the Program is final and is not reviewable by any other executive agency or other branch of government.

VII. Requests for Approval as a Mentor Firm

A. A request for approval as a mentor firm must contain the following:

(1) A statement that the company is an other than small business concern performing under DoD contracts with subcontracting plans negotiated by DoD.

(2) The total dollar amount of DoD contracts and subcontracts received during the two preceding fiscal years (broken out spearately.)

(3) The total dollar value of all subcontracts awarded and the number and percentage of awards made to SDBs under DoD contracts during two previous fiscal years.

(4) Number of dollar value of subcontract awards made to protege firms during the two preceding fiscal years (if any).

(5) Information on the ability to provide developmental assistance to enhance the capabilities of the identified protege firm(s), and an indication as to how such assistance will result in increased subcontract awards to such protege.

(6) The company's concept for participating in the Program.

(7) A statement that the company is eligible for the award of government contracts and subcontracts.

B. A company may not be approved for participation in the program as a mentor firm if it has been debarred or suspended from contracting with the Federal Government pursuant to FAR part 9.4. Should debarment or suspension occur while the mentor firm is performing under an approved mentor-protege agreement the mentor firm:

(1) may continue to provide assistance to its protege firms pursuant to approved mentor-protege agreements entered into prior to the imposition of such suspension or debarment;

(2) May not be reimbursed for any costs of providing developmental assistance to its protege firm, incurred more than 30 days after the imposition of such suspension or debarment; and

(3) Shall give notice of its suspension or debarment to its protege firm, its ACO or PCO, and OSADBU.

VIII. Mentor-Protege Agreements

A. Signed mentor-protege agreements submitted for approval under the Program shall include:

(1) The name, address and telephone number of the mentor firm and protege firm and a point of contact within the mentor firm who will administer the developmental assistance program;

(2) The SIC code which represents the contemplated supplies or services to be provided by the protege firm to the mentor firm and a statement that the size of the protege firm does not exceed the appropriate SIC code.

(3) A developmental program for the protege firm specifying the type of assistance that will be provided, identified in (C) below. The developmental program shall include the following:

(a) Factors to assess the protege firm's developmental progress under the Program and;

(b) The anticipated number and type of subcontracts to be awarded the protege firm; and

(4) A program participation term for the protege firm which shall not exceed five years and may be renewed for four years. Mentor firms seeking cost reimbursement shall not submit for approval mentor-protege agreements exceeding the term of the contracts under which developmental costs will be allocated.

(5) Procedures for the mentor firm to notify the protege firm of its intent to withdraw from the Program voluntarily which provide for 60 days advance written notice to the protege firm.

(6) Procedures for a protege firm to terminate the mentor-protege agreement voluntarily which provide for 30 days advance written notice to its mentor firm.

(7) Procedures for the termination of the mentor-protege agreement for cause by the mentor firm, which provide:

(a) The protege firm shall be furnished a written notice of the proposed termination, stating the specific reasons for such action, not later than 90 days in advance of the effective date of such proposed termination.

(b) The protege firm shall have 30 days to respond to such notice of proposed termination, and may rebut any findings believed to be erroneous and offer a remedial program.

(c) Upon prompt consideration of the protege firm's response, the mentor firm shall either withdraw the notice of proposed termination and continue the protege firm's participation, or issue the notice of termination.

(d) The decision of the mentor firm regarding termination for cause, conforming with the requirements of this section, shall be final.

(8) Procedures for the termination of individual elements of developmental assistance.

(9) Additional terms and conditions as maybe agreed upon by both parties.

B. A copy of the voluntary withdrawal from the Program and any termination notices shall be sent to OSD OSDBU, and the ACO or PCO.

C. Termination of a mentor-protege agreement shall not impair the contractual obligations of the mentor firm and the protege firm, to be performed in accordance with the terms and conditions of the applicable contractual agreements.

D. The mentor-protege agreement may provide for the mentor firm to furnish any or all of the types of developmental assistance as follows:

(1) Assistance by mentor firm personnel in:

(a) General business management including organizational management, financial management and personnel management, marketing, business development and overall business planning;

(b) Engineering and technical matters such as production inventory control, quality assurance and

(c) Any other assistance designed to develop the capabilities of the protege firm under the developmental program.

(2) Award of subcontracts under DoD contracts or other contracts on a non-competitive basis.

(3) Payment of progress payments for the performance of subcontracts by a protege firm in amounts as provided for in the subcontract; but in no event may any such progress payment exceed 100% of the costs incurred by the protege firm for the performance of the subcontract.

(4) Advance Payments under such subcontracts.

(5) Loans.

(6) Cash in exchange for an ownership interest in the protege firm, not to exceed 10% of the total ownership Interest.

(7) Assistance obtained by the mentor firm for the protege firm from one or more of the following:

(a) Small Business Development Centers established pursuant to section 21 of the Small Business Act (15 U.S.C. 648).

(b) Entities providing procurement technical assistance pursuant to chapter 142 of title 10 U.S.C. (PTAP)

(c) Historically Black Colleges and Universities as defined by 34 CFR 608.2

(d) Minority Institutions of Higher Education.

E. Mentor firms are encouraged to authorize advance payments under mentor-protege agreements as a method to finance the performance of subcontracts by protege firms. Such advance payments under subcontracts between the mentor firm and its protege firm may be made upon such terms and conditions as may be specified in the subcontract agreement.

F. A mentor firm may not require a SDB concern to enter into a mentor-protege agreement as a condition for being awarded a contract by the mentor firm including a subcontract under a DoD contract awarded to the mentor firm.

IX. Advance Agreements on the Treatment of Developmental Assistance Costs

A. Companies that have been approved by DoD OSADBU in accordance with III above must negotiate proposed Advance Agreements. Proposed advance agreements are negotiated between the contracting officer and the mentor firm in accordance with FAR 31.109(e). Proposed advance agreements must state the name and telephone number of the appropriate PCO or ACO, and state whether the company is seeking reimbursement of costs for developmental assistance, credit against SDB subcontracting goals established under DoD contracts or a combination of reimbursement and credit. The advance agreement must meet the requirements in 219.7105.

B. upon receipt of the mentor protege documents from OSADBU, the contracting officer will have the responsibility to negotiate the advance agreement or delegate this authority to the ACO, modify applicable contracts in accordance with 219.7104–2 (b) and provide a copy of the negotiated advance agreement to DoD OSADBU.

X. Reimbursement Procedures

A. A mentor firm shall be reimbursed for the total amount of any progress payment or advance payment made to protege firms in connection with a DoD contract under an approved advance agreement and mentor-protege agreement, through the cost reimbursement procedures otherwise applicable to the contract.

B. A mentor firm shall be reimbursed for developmental assistance costs in accordance with an approved advance agreement through a separately priced contract line item.

C. Costs Eligible for Reimbursement are:

(1) Costs incurred by a mentor firm for developmental assistance to a protege firm under VII (B) (1) and (7), pursuant to an approved mentor-protege agreement to the maximum extent provided under the terms of an approved advance agreement.

(2) The full amount of any progress payment or advanced payment made to a protege firm in connection with a DoD contract under an approved mentor-protege agreement.

D. No profit may be associated with the reimbursement of developmental assistance costs under the Program.

E. Absent the existence of an advance agreement between the mentor firm and DoD as specified in IX above, DoD will in no way be liable for reimbursement of costs under the Program.

XI. Credit for Unreimbursed Developmental Assistance Costs

A. Except as provided in E below, developmental costs incurred by a mentor firm in providing assistance to a protege firm pursuant to an approved mentor protege agreement, for which cost reimbursement has not been provided, may be recognized as credit in lieu of subcontract awards for determining the performance of such mentor firm in attaining a SDB subcontracting goal(s) established under:

(1) A DOD contract; or

(2) Any division wide or company wide subcontracting plan which the mentor firm has negotiated with DOD.

B. The amount of credit a mentor firm may receive for any such unreimbursed developmental assistance costs shall be equal to:

(1) Four times the total amount of such costs attributable to assistance provided by SDBs, HBCUs, MIs, and PTAPs.

(2) Three times the total amount of such costs attributable to assistance furnished by the mentor's employees.

(3) Two times the total amount of other such costs.

C. A mentor firm shall receive credit toward the attainment of a SDB subcontracting goal(s) for each subcontract awarded for a product or a service by the mentor firm to a business concern that, except for its size would be a small business concern owned and controlled by socially and economically disadvantaged individuals, but only if:

(1) The size of such business concern is not more than two times the appropriate size standard; and

(2) The business concern formerly had a mentor-protege agreement with such mentor firm that was not terminated for cause.

D. Amounts credited toward the SDB goal(s) for unreimbursed costs under the program shall be separately identified from the amounts credited toward the goal for the award of actual subcontracts to protege firms and reported in accordance with § 252.219.7007. The combination of the two shall equal the mentor firm's overall accomplishment toward the SDB goal(s).

E. Adjustments may be made to the amount of credit recognized:

(1) If a mentor firm's performance in the attainment of its SDB subcontracting goals through actual subcontract awards declined from the prior fiscal year without justifiable cause. OSADBU may limit the total amount of credit which such firm may claim under A and B above.

(2) If OSADBU determines that imposition of such a limitation on credit appears to be warranted to prevent abuse of this incentive for mentor firm's participation in the Program, the mentor firm shall be afforded the opportunity to explain the decline in SDB participation before imposition of any such limitation on credit. In making the final decision to impose limitation on future credit, the following shall be considered:

(a) The mentor firm's overall SDB participation rates (in terms of percentages of subcontract awards and dollars awarded) as compared to the participation rates existing during the two fiscal years prior to the firm's admission to the Program;

(b) The mentor firm's aggregate prime contract awards during the prior two fiscal years and the total amount of subcontract awards under such contracts; and

(c) Such other information the mentor firm may wish to submit.

(3) The decision regarding the imposition of a limitation on credit shall be final.

(4) Any prospective limitation on credit imposed by the Director shall be expressed as a percentage of otherwise eligible credit and shall apply beginning on a specific date in the future and continue until a date certain during the current fiscal year.

(5) Any retroactive limitation on credit imposed by the Director shall reflect the actual costs incurred for developmental assistance (not exceeding the maximum amount reimbursed.)

F. For purposes of calculating any incentives to be paid for exceeding a SDB subcontracting goal pursuant to a DOD contract, incentives shall only be paid if a SDB subcontracting goal has been exceeded as a result of actual subcontract awards to SDBs.

XII. Definitions

(1) *Emerging SDB Concern* means a small disadvantaged business whose size is no greater than 50% of the numerical size standard applicable to the standard industrial classification code assigned to a contracting opportunity.

(2) *Minority Institution of Higher Education* means an institution of higher education with a student body that reflects the composition specified in section 312(b) (3), (4) and (5) of the Higher Education Act of 1965 (20 U.S.C. 1058 (b) (3), (4) and (5).

Horace J. Crouch,

Director, Small and Disadvantaged Business Utilization.

[FR Doc. 91-10322 Filed 5-1-91: 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 219 and 252

Department of Defense, Federal Acquisition Regulation Supplement, Small Business and Small Disadvantaged Business Concerns

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for comments.

SUMMARY: The Defense Acquisition Regulations (DAR) Council is proposing changes to implement section 831 of Public Law 101–510 as amended, The National Defense Authorization Act for Fiscal Year 1991. Section 831 establishes a pilot Mentor-Protege Program. Under this program DoD will establish incentives for selected contractors to provide developmental assistance to small disadvantaged businesses.

DATES: Comments on this proposed rule should be submitted in writing to the address shown below on or before June 3, 1991, for consideration in formulation of the final rule. Please cite DAR Case 90–314 in all correspondence related to this proposed rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations System, ATTN: Mrs. Alyce Sullivan, OUSD(A), c/o room 3D139, the Pentagon, Washington, DC 20301–3062.

FOR FURTHER INFORMATION CONTACT: Mrs. Alyce Sullivan, 703/697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

Section 831, Public Law 101–510, enacted November 5, 1990 provides for the establishment of a pilot "Mentor-Protege Program". The purpose of this program is to provide incentives for major DoD contractors to furnish disadvantaged small business concerns with assistance to enhance capabilities. Participation in the Pilot program is voluntary. Under the pilot program, selected contractors may receive cost reimbursement, credit against Small Disadvantaged Business goals, or a combination of both for developmental assistance to small disadvantaged businesses. Section 831 directs the Secretary of Defense to publish proposed regulation not later than 180 days of enactment (May 5) and final regulations not later than 270 days after enactment (August 5).

DoD implementation of section 831 is addressed in a DoD policy statement, titled: "DoD Policy for Implementation of the Mentor Protege Pilot Program". The policy statement addresses the program's purpose, procedures, duration, eligibility requirements, the approval process, Mentor-Protege Agreements, and reimbursement procedures.

The Defense Federal Acquisition Regulation Supplement (DFARS) proposed rule is based on the DoD policy statement. It is directed to contracting officers and contractors selected for participation. The DFARS provides limited general information on the program, making reference to the DoD policy statement for more details. It addresses contracting officer responsibilities and advance agreements on the treatment of developmental assistance costs. The DFARS also provides a clause pertaining to reporting of progress under the program.

B. Regulatory Flexibility Act

An Initial Regulatory Flexibility Analysis has been prepared and forwarded to the Chief Counsel for Advocacy of the Small Business Administration. Comments are invited from small entities concerning the proposed DFARS revisions, such comments should be submitted separately. Please cite DAR Case 90–610 in correspondence.

C. Paperwork Reduction Act

The information collection requirements in this rule do not require the approval of OMB under 44 U.S.C. 3501 because they are based on a voluntary pilot program, which will affect a limited number of contractors. The pilot program is based on section 831 of Public Law 101–510. In accordance with section 831 of Public Law 101–510, the results of the pilot program will be evaluated by the General Accounting Office and furnished to the Committees on Armed Services and Small Business of the Senate and House of Representatives.

List of Subjects in 48 CFR Parts 219 and 252

Government procurement.

Nancy L. Ladd,

Colonel, USAF, Director, Defense Acquisition Regulation System.

Therefore, it is proposed that 48 CFR parts 219 and 252 be amended as follows:

1. The authority citation for 48 CFR parts 219 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35 and FAR subpart 1.3.

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

2. A new subpart 219.71 is added to read as follows:

Subpart 219.71—Mentor-Protege Pilot Program

Sec.

Subpart 219.71—Mentor-Protege Pilot Program

219.71—Mentor-Protege Pilot Program.

219.7100 Scope.

This subpart implements the Mentor-Protege Pilot Program (the program), established under section 831 of the National Defense Authorization Act for Fiscal Year 1991, Public Law 101–510, as amended.

219.7101 Policy.

DoD policy for implementation of the program is contained in a policy statement entitled, "DoD Mentor-Protege Pilot Program". This statement addresses the program purpose, duration, eligibility requirements, the approval process, the mentor-protege agreement and advance agreements on the treatment of developmental assistance costs. A copy of the statement may be obtained from the Office of Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense for Acquisition, OUSD(A) SADBU, (202) 697–1688.

219.7102 Definitions.

Emerging SDB concern means a small disadvantage business whose size is not greater than 50 percent of the numerical size standard applicable to the standard industrial classification code assigned to a contracting opportunity.

Minority institution of higher education means, for the purpose of this subpart, an institution of higher education with a student body that

reflects the composition specified 20 U.S.C. 1058(b) (3), (4) and (5).

219.7103 General.

The Program in general consists of:

(a) Mentor firms, which are large businesses, performing under DoD contracts with subcontracting plans, that voluntarily apply and are approved by the DoD.

(b) Protege firms, which are small disadvantaged business (SDB) firms, eligible for receipt of Federal contracts and selected by the mentor firm.

(c) Mentor-protege agreements which establish a developmental assistance program for a protege (See DoD Policy).

(d) Incentives, which are provided to mentors by the DoD including:

(1) Reimbursement for developmental assistance costs;

(2) Credit against SDB subcontracting goals established under DoD contracts; or

(3) A combination of reimbursement and credit.

(e) Advance agreements, which outline the treatment of costs and/or credit associated with performance under the mentor-protege agreement.

219.7104 Procedures.

219.7104–1 General.

(a) In accordance with the DoD policy statement, a prospective mentor shall submit to the OUSD(A) SADBU:

(1) A request for approval as a mentor and a signed mentor-protege agreement;

(2) The proposed costs of the developmental assistance to be provided to the protege(s) under the program; and

(3) An advance agreement proposal.

(b) OUSD(A) SADBU shall have responsibility for:

(1) Approving contractors as mentor firms, in consultation with contracting officers;

(2) Approving mentor-protege agreements and funding levels;

(3) Forwarding to contracting officer(s) the approved mentor-protege agreement, the approved funding level, and the advance agreement proposal.

219.7104–2 Contracting officer responsibilities.

Upon receipt of approved mentor-protege documents from the OUSD (A) SADBU, the contracting officer shall:

(a) Negotiate the advance agreement or delegate this authority to the Administrative Contracting Officer (ACO).

(b) Modify applicable contract(s) to incorporate the advance agreement and establish a contract line item to incorporate the mentor-protege agreement and provide for reimbursement of cost and/or credit towards SDB subcontracting goals under DoD contracts. The line item must be separately priced or indicate zero costs. It may not indicate "Not Separately Priced". This authority may be delegated to the ACO.

(c) Provide a copy of the negotiated advance agreement on treatment of developmental assistance costs to the OUSD(A) SADBU.

219.7105 Advance agreements on the treatment of developmental assistance costs.

219.7105–1 General policy.

(a) Advance agreements are negotiated between the contracting officer and the mentor firm, but see FAR 31.109(e). These agreements must address: Reimbursement of costs for developmental assistance, credit against SDB subcontracting goals established under DoD contracts, or a combination of reimbursement and credit.

(b) Credit only (toward small disadvantaged business subcontracting goals) for developmental assistance may be provided under any type of DoD contract. Reimbursement for developmental assistance costs is limited to cost type DoD contracts, excluding time and material contracts.

(c) All advance agreements under the program must be in accordance with FAR 31.109 and include:

(1) A statement that all developmental assistance costs under the program must be separate contract line item charges. Charges that are not reimbursed may be eligible for credit.

(2) A statement that assistance costs relative to loans and equity ownership shall not be reimbursed or credited and that only the following costs incurred by mentor firms are eligible for reimbursement or credit:

(i) Assistance to the protege by mentor firm personnel in—

(A) General business management including organizational management;

(B) Financial management;

(C) Personnel management;

(D) Marketing;

(E) Business development and overall business planning;

(F) Engineering and technical matters such as production, inventory control, and quality assurance;

(G) Any other assistance designed to develop the capabilities of the protege firm.

(ii) Assistance to the protege firm provided by—

(a) Small business development centers established pursuant to section 21 of the Small Business Act (15 U.S.C. 648);

(B) Entitles providing technical assistance pursuant to chapter 142 of title 10 U.S.C.;

(C) Historically Black colleges and universities (HBCUs) as defined by 34 CFR 608.2; and

(D) Minority institutions of higher education.

(3) A statement indicating that subcontracts with the protege firm(s) may contain provisions for progress payments up to 100 percent or advance payments, and an identification of subcontracts including such provisions (if available).

(4) A base line to measure whether the mentor firm's overall dollar and number of awards to SDBs have increased or decreased.

219.7105–2 Advance agreements addressing reimbursement.

Advance agreements addressing reimbursement, in addition to the information in 219.7105–1, require:

(a) An identification of prime contract(s) that will include funding for developmental assistance costs. These costs must be related directly to the specific forms of assistance identified in the mentor-protege agreement and must not be a duplication of normal costs associated with the administration of subcontracts.

(b) A statement that no profit will be paid on developmental assistance costs under the program.

219.7105–3 Advance agreements addressing credit.

Advance agreements addressing only credit against SDB subcontracting goals established under DoD contracts, in addition to the information in 219.7105–1, require:

(a) An identification of prime contract(s) that will be credited for developmental assistance costs, in lieu of reimbursement. These costs must be related directly to the specific forms of assistance identified in the mentor-protege agreement.

(b) An explanation of how costs not reimbursed would be credited against SDB goals, and how such credit will be apportioned among contracts. Contractors participating in the Comprehensive Small Business Subcontracting Plan Test Program should state how costs not reimbursed will be credited toward the negotiated corporate wide goal.

(c) Identification of the amount of credit a mentor firm may receive for such developmental assistance costs not reimbursed which is—

(1) Four times the total amount of such costs attributable to assistance provided

by small business development centers, HBCUs, MIs and entities providing technical assistance.

(2) Three times the total amount of such costs attributable to assistance furnished by the mentor's employees.

(3) Two times the total amount of other such costs.

(d) A statement that the mentor firm may receive credit toward SDB subcontract goals for awards to former protege firms (except those with mentor-protege agreements terminated for cause), even if the former protege exceeds small business size standards, provided the size of such a concern is not more than two times the appropriate size standard.

(e) A statement that costs for which reimbursement has not been provided may be recognized as credit only under DoD subcontracting plans or any division-wide or company-wide DoD subcontracting plan, with no expectation of future reimbursement by the Government.

(f) A statement that the OUSD(A) SADBU may adjust the amount of allowable credit in accordance with the DoD policy statement.

(g) A statement that incentives for exceeding an SDB subcontracting goal shall be paid only if an SDB subcontracting goal was exceeded as a result of actual subcontract awards to SDBs, and not as a result of developmental assistance credit.

219.7105-4 Advance agreements addressing both reimbursement and credit.

Advance agreements seeking both reimbursement and credit against SDB subcontracting goals shall address the requirements of 219.7105-1 through 219.7105-3.

219.7106 Contract clause.

Use the clause at 252.219-XXXX, DoD Mentor Protege Pilot Program, in contracts with mentor firms when an advance agreement has been incorporated under 219.7104-2(b).

PART 252—[AMENDED]

3. Section at 252.219-XXXX is added to read as follows:

252.219-XXXX DoD Mentor Protege Pilot Program.

As prescribed in 219.7106, use the following clause:

DoD Mentor Protege Pilot Program

Mentor firms shall report on the progress made under active mentor-protege agreements, by semi-annually including with their SF 295, Summary Subcontract Report—

(a) An attachment which—

(1) Identifies the number of advance agreements and mentor-protege agreements in effect; and

(2) Summarizes the progress in achieving the developmental objectives under each mentor-protege agreement, including whether the objective of the program set forth in the DoD policy statement were met, any problem areas encountered, and any other information, as appropriate.

(b) A copy of the SF 294, Subcontracting Report for Individual Contracts, for each contract under the Mentor Protege Pilot Program, with a statement in block 18 identifying—

(1) The amount of dollars credited to the SDB subcontract goal, established under DoD contracts, as a result of developmental assistance provided to protege firms; and

(2) The number/dollar value of subcontracts awarded to protege firms.

(End of clause)

[FR Doc. 91-10321 Filed 5-1-91; 8:45 am]

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federal register

Thursday
May 2 1991

Part VI

The President

Presidential Proclamations

Federal Register
Vol. 56, No. 85
Thursday, May 2, 1991

Presidential Documents

Title 3—

The President

Proclamation 6284 of April 30, 1991

Older Americans Month, 1991

By the President of the United States of America

A Proclamation

People are our Nation's most precious asset, and America's senior citizens are no exception. These men and women constitute a wellspring of acquired wisdom and skill, and it is fitting that our celebration of Older Americans Month, 1991, should have as its theme, "Older Americans: A Great Natural Resource."

Older Americans have charted the course of our Nation throughout most of this century. While many youngsters view the Great Depression and World War II as the stuff of schoolbooks, it was today's senior citizens who experienced these and other defining moments in American history and, through them, helped to shape the world in which we live. With faith, courage, and countless sacrifices on both the home front and the field of battle, these Americans joined our Nation's allies in defeating the tyrannical forces that threatened to destroy an entire continent during World War II. The industry and creativity of today's older Americans later gave America the technological edge needed to put the first man on the moon. Indeed, their ingenuity and hard work have enabled the United States to make many great and historic strides in business, agriculture, and health care.

Today older Americans continue to merit our respect and gratitude. Whether they quietly enrich the lives of their families and friends or engage in paid employment and voluntary community service, senior citizens are an invaluable source of knowledge and experience. Today many older Americans are remaining in the work force well past the traditional retirement age, and more and more seniors are pursuing second careers. In fact, older Americans are as much a part of our future as they are a part of our past: the contributions that they continue to make in this century will benefit our families and our Nation well into the next.

Over the years older Americans have taught us many powerful lessons about duty, faithfulness, and honor. With those lessons in mind, let us renew our determination to help our senior citizens live with the independence, comfort, and security that they need and deserve. We can begin by reaffirming our support for those public agencies, private organizations, and individuals who work, each and every day of the year, to dispel myths about aging; to protect older Americans from discrimination and exploitation; and to provide long-term health care and other services for seniors with special needs. Their efforts should be a compelling reminder of the respect and gratitude that each of us owes to our society's eldest members.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the month of May 1991 as Older Americans Month. I call upon the people of the United States to observe this month with appropriate ceremonies and activities in honor of our Nation's senior citizens.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth

George Bush

[FR Doc. 91-10603
Filed 5-1-91; 11:30 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 6285 of April 30, 1991

National Physical Fitness and Sports Month, 1991

By the President of the United States of America

A Proclamation

Anyone who has ever taken part in sports or other athletic activities knows that doing so is not only fun but also a wonderful way to achieve greater physical fitness. Today there are exciting sports and athletic opportunities to match virtually every personal interest and ability, from running, racquetball, fencing, and skiing to swimming, soccer, aerobic dance, and golf—just to name a few.

Whether they engage in periodic workouts or in favorite individual and team sports—or perhaps all three—Americans who exercise regularly enjoy a host of benefits. In addition to enhancing one's physical strength and agility, athletic activity helps to alleviate many of the effects of stress and aging. People who participate in sports and other forms of exercise also enjoy the profound sense of satisfaction and self-confidence that come from meeting a challenge. In a special way team sports enable participants to develop valuable communication skills, as well as a rewarding sense of cooperation and fellowship.

As more and more Americans discover these and other advantages of regular athletic activity, our communities and Nation benefit as well. Because physically fit persons generally have more energy and stamina, greater athletic activity among our population contributes to greater productivity and performance in the workplace. Because an active, healthy life-style can help to prevent coronary disease and other health problems, increased public participation in sports can also help to keep medical costs down.

Recognizing the many benefits of physical fitness to individuals and to the Nation, I have joined with Arnold Schwarzenegger, Chairman of the President's Council on Physical Fitness and Sports, in declaring the 1990s the "Fitness Decade." Just as it is never too early to nurture good habits in one's children, it is never too late for adults to reap the rewards of regular exercise; hence, we are calling on Americans of all ages to commit to get fit. Everyone can benefit from regular exercise, and everyone can find a sport or other physical activity that meets his or her abilities and interests. This month is a splendid opportunity for all those who have not yet done so to take the first step toward healthier, fuller lives through participation in sports and other forms of exercise.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the month of May 1991 as National Physical Fitness and Sports Month. I urge all Federal, State, and local government agencies and the people of the United States to observe this month with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 91-10604
Filed 5-1-91; 11:31 am]
Billing code 3195-01-M

Editorial note: For the President's remarks on physical fitness, see the *Weekly Compilation of Presidential Documents* (vol. 27, no. 18).

Reader Aids

Federal Register

Vol. 56, No. 85

Thursday, May 2, 1991

INFORMATION AND ASSISTANCE

FEDERAL REGISTER PAGES AND DATES, MAY

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

48 CFR

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

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